



# North Carolina Procurement Manual

**NC★DOA**  
Department of Administration  
**Purchase & Contract**

**2022**

# Introduction

The North Carolina Department of Administration (NCDOA) serves as the business manager for the state of North Carolina. In this capacity, NCDOA oversees government operations such as building construction, procurement of non-IT goods and services, management of state vehicles, acquisition and disposal of real property, and operation services such as courier mail delivery and the sale of surplus property. Additionally, NCDOA oversees many of the state's advocacy programs, which advocate for and serve diverse segments of the state's population that have been traditionally underserved.

NCDOA's mission provides three imperatives that guide the department:

- 1) Explore new and improved ways to deliver effective and efficient services to create value for taxpayers.
- 2) Provide superior customer service.
- 3) Create a culture of trust through enhanced employee engagement, openness, and inclusiveness.

Located within NCDOA is the Division of Procurement & Contract (P&C), the state's central procurement authority. P&C oversees procurement for all state departments, institutions, agencies, universities, and community colleges. In support of NCDOA's mission, P&C is responsible for leading, implementing, and administering the strategy, policy, and practices for the procurement of non-IT goods and services associated with the state's operations.

Procurement in the state of North Carolina is governed by the North Carolina General Statutes (statutes), North Carolina Administrative Codes (rules), and various policies and procedures which govern the state's procurement practices. While P&C is the central procurement authority for non-IT goods and services, there are two other defined procurement entities for the state. The Department of Information Technology (DIT), Statewide Information Technology Procurement Office (SITP) serves as the authority over the procurement of all IT goods and services. Similarly, the NCDOA, State Construction Office (SCO) serves as the authority for procurement of all state construction projects.

## P&C Mission and Vision

The mission of P&C is to provide for the effective and economical acquisition of goods and services for the state of North Carolina.

The vision of P&C is to be a trusted partner that delivers outstanding customer service, fosters collaborative relationships, and adds value through strategic actions, efficient processes, and innovative technology to be recognized as a world-class procurement operation.

As such, P&C is committed to being accountable for developing and maintaining competencies, to include knowledge, skills, and abilities, which establishes P&C as the center of excellence for subject matter experts in North Carolina procurement processes and practices. This commitment involves transitioning from traditional public procurement practices to the development and adoption of more innovative processes that promote

sound fiscal decision-making and encourage competition; thus ensuring that the public good has been served.

To achieve such an endeavor, P&C is organized into five sections that are closely integrated, to include:

- 1) **Procurement Education** - Provides training on procurement policy, methods, strategies, and skillsets to procurement professionals across the state
- 2) **Strategic Sourcing** - Performs the procurement function on behalf of P&C by assisting agencies with procurements that exceed their general delegations and managing Statewide Term Contracts (STCs)
- 3) **Contract Management (Legal)** - As the in-house legal department for P&C, assists procurement professionals with legal issues related to procurement, including contract interpretation and negotiation
- 4) **Compliance** - Reviews agency activities to ensure compliance with procurement policies, laws, and practices
- 5) **Systems Support** - Provides support for all related procurement systems and technologies for each above area

Each of the sections supports P&C in:

- Creation and management of procurement policies
- Providing guidance on procurement strategies
- Determination of appropriate procurement methods and strategies
- Ensuring compliance with the tenets of fair and open competition, with respect to ethical and transparent procurement
- Support the utilization and participation of Historically Underutilized Businesses (HUB)
- Facilitation of the solicitation process through contract award
- Creation and maintenance of procurement file best practices
- Administration of all STCs, including vendor performance, modifications, renewals, cancellations, and disputes
- Management of vendor relationships

## Statutory Authority

The procurement of non-IT goods and services in the state is governed by Chapter 143, Article 3 of the North Carolina General Statutes. State agencies, institutions, community colleges, and the universities of the UNC system must adhere to these statutes. Entities that do not fall under this authority include public schools, charter schools, and local and county governments, which fall under the authority of Chapter 143, Article 8.

An additional source of authority is the North Carolina Administrative Code. The procurement of non-IT goods and services is governed by Title 01 Chapter 05 of the code, with most provisions set forth in Subchapters 05A and 05B.

## Contracting in Violation of the Law

Pursuant to G.S. 143-58, any contracts that are not procured in accordance with state procurement laws or rules shall be void and of no effect. In addition, the executive officer or the secretary of any agency shall be personally liable for the costs of any such contract. Therefore, it is the responsibility of each agency involved to ensure that all procurement is carried out in accordance with all applicable laws, policies, and procedures.

## Integrity and Ethics

Integrity and ethics are central to public procurement. While laws and rules coalesce to provide a mechanism for public procurement, only people can ensure that integrity and ethics are the standard. In procurement, as in all fields, professionals must exhibit the values of pride and worth in their conduct and performance. Impediments to these values must be detected early, and safeguards provided at all levels. This applies to both state personnel and the vendor community.

Ethics are the moral principles that govern behavior and conduct. Strong ethical principles are required for public procurement because they prevent breach of the public trust by any attempt to realize personal gain through conduct inconsistent with discharge of duties. Therefore, it is imperative that all state personnel be entirely cognizant of the necessity for ethical behavior. It takes only the slightest hint of impropriety to cast doubt on the procurement process. To that end, G.S. 14-234 (a)(3) states, "No public officer or employee may solicit or receive any gift, reward or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves."

G.S. 133-32 further prohibits the offer to, or acceptance by, any state employee of any gift from anyone with a contract with the state, or from any person seeking to do business with the state.

P&C takes pride in leading the efforts on integrity and ethics for procurement. These efforts are based on common ethical principles derived from professional codes of conduct provided by organizations such as the National Institute of Governmental Purchasing (NIGP), the Universal Public Procurement Certification Council (UPPCC), and the American Bar Association (ABA).

Common ethical principles that P&C strives to perfect include:

- **Impartiality** - Equal treatment of all suppliers/customers and objective evaluation of each transaction and contract based on value and merit
- **Honesty** - Truth in all dealings with everyone, including contractors and the public
- **Loyalty** - Faithfulness to the entity, free of conflicts of interest

# North Carolina Procurement Manual

This procurement manual is based on the above concepts and best business practices. The intent of the manual is to support state entities in the administration of their efficient and effective internal procurement programs. While the North Carolina Procurement Manual is a state-led policy and process manual, it is important to note that each state agency, institution, community college, and university should maintain an individual agency procurement manual to set forth the policies and procedures governing their delegated authority for the procurement of goods and services.

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# Section 1: Procurement Delegations and Thresholds

## 1.1 Delegations

There are normally two types of delegations: general and special. The differences between these and the conditions under which they are delegated are explained elsewhere in the manual.

Delegations provide dollar thresholds that govern any agency's authority to procure goods and services. Agencies have the authority to purchase goods and services valued less than the agency's general delegation without involvement from the Division of Purchase and Contract (P&C). Universities have similar authority for purchases valued less than the university's bid value benchmark. Any transaction that exceeds an entity's general delegation or benchmark must be reviewed and approved by P&C unless it is otherwise exempted.

Contracts valued less than the agency's general delegation shall be the purchasing agency's responsibility. 01 NCAC 05B .0301. Agencies shall develop internal policies for purchases that are valued less than the general delegation, which shall comply with state law and the Administrative Code.

Each agency should designate one or more individuals to be responsible for the procurement functions of the agency. It is recommended that just one office have this responsibility, to ensure consistency and accountability for all expenditures.

Agencies shall not divide requirements into more than one procurement in order to keep the individual purchases under the general delegation amount, and thereby avoid certain rules and processes, including P&C oversight. 01 NCAC 05B .0315.

Agencies must ensure that they do not exceed their general delegation in handling any type of purchase. This includes monthly and quarterly (scheduled buying) purchases and agency specific term contracts, which may be established for items acquired by an agency on a repetitive basis. The cumulative contract value, including the original contract period and any renewals and extensions, must be used to determine whether a procurement is within the agency's general delegation.

Agencies should monitor purchases valued under their general delegation to guard against abuse of the system and to ensure that the dollar value received is commensurate with the dollar amount expended.

### 1.1.1 General Delegations

The State Purchasing Officer (SPO) is authorized by statute to set the general delegation for most state agencies. G.S. 143-53.1 and -53(a)(2). Agency delegation information is set forth in 01 NCAC 05B .0301.

The maximum authorized general delegations and benchmarks for goods and services are as follows:

- Agencies (excluding universities) are eligible for a maximum general delegation of \$100,000.
  - Agency general delegations may be increased or decreased by the SPO, as discussed below.
- Community college delegations are set by the State Board of Community Colleges, in consultation with the Department of Administration, and are capped at \$100,000 as provided in G.S. 115D-58.14.
- University benchmarks are as set by the University Board of Governors and are capped at \$500,000.
  - The university bid value benchmark is established pursuant to G.S. 116-31.10.

Although the purchasing benchmarks for universities are set by the University Board of Governors, those purchases are otherwise governed by state law and the Administrative Code. To help eliminate confusion, the term used to describe the authority to make purchases under an agency's delegation or a university's benchmark may be referred to as a "general delegation." The terms "benchmark" and "general delegation" are used interchangeably.

Agencies shall not independently award purchases that exceed their general delegation, whether based on the original contract amount or the contract amount as amended, without approval from P&C.

Agencies shall use solicitation templates provided by P&C for purchases that exceed their general delegation. Solicitation documents shall include the state's standard terms and conditions and other consistent contract language issued by the SPO. Invitation for Bid (IFB), Request for Quote (RFQ), and Request for Proposals (RFP) templates provided by P&C shall be used unless the SPO grants permission to modify the solicitation document language.

### **1.1.2 Increasing or Reducing the General Delegation**

The SPO is authorized by statute to raise or lower an agency's general delegation after consideration of its overall capabilities, including staff resources, purchasing compliance reviews and risk assessment, established procurement plan and policies, Historically Underutilized Businesses (HUB) plan, bid protest history, and staff training and certifications of the individual agency. G.S. 143-53(a)(2).

P&C is authorized to conduct compliance reviews of an agency's procurement practices. Compliance reviews shall determine whether agencies are complying with North Carolina procurement laws and regulations and whether an agency's delegations should be adjusted. The SPO shall also conduct a compliance review whenever an agency requests a delegation increase in order to evaluate whether the increase is appropriate. 01 NCAC 05B.1605.

### 1.1.3 Special Delegations

Special delegations apply to categories of goods and services that are specifically exempted by the SPO from P&C oversight. By special delegation, the SPO may authorize an agency to independently purchase specific commodities, printing, or contractual services without limitation as to the expenditure. By contrast, general delegations, discussed above, are dollar thresholds under which agencies may procure all of their own goods and services without P&C review.

For goods and services governed by a special delegation, purchasing agencies are authorized to make their own purchases, regardless of dollar amount, but competition shall be sought where available. This is normally confined to procurements for which P&C involvement serves no purpose or adds no value. Such circumstances include perishability, transportation costs, local conditions, or local availability.

Special delegations shall be in writing and retained as a matter of record. 01 NCAC 05B.1603. Unless otherwise specified by the SPO, special delegations are subject to the following conditions and limitations:

- a) All goods and services covered by Statewide Term Contracts (STCs) must be purchased in accordance with the instructions of each contract.
- b) Competition must be solicited, where available. If competition is not available, the reason(s) must be documented in the procurement file.
- c) Agencies are required to issue their own solicitation documents. The solicitation document shall include one of the solicitation templates provided by P&C, including the state's standard terms and conditions and any other consistent contract language issued by the SPO, unless prior approval from the SPO is granted to substitute modified language.
- d) All transactions shall be documented.
- e) Awarding of contracts pursuant to a special delegation shall be the responsibility of the agency's executive officer (agency head).
- f) Any controversial matter arising from a special delegation must be brought to the attention of the SPO.
- g) All bid protests on awards that exceed an agency's general delegation must be handled by the SPO.
- h) Specific delegations may be subject to additional conditions as determined by the SPO. These conditions shall be submitted to the agency in writing.
- i) All contracts expected to exceed \$1 million shall comply with the requirements of G.S. 143-50.1.
- j) P&C shall periodically review all approved special delegations to ascertain the continued suitability for delegation.

## 1.1.4 Exemptions

In addition to special delegations, certain agencies or classes of goods and services may be exempted from P&C involvement. A few notable categories of exemptions are discussed below.

### 1.1.4.1 Statutory Exemptions

Various agencies and governmental entities may have specific statutory authority that exempts them from P&C procurement statutes and rules. These statutory exemptions may encompass all of an entity's procurement activities or only specific types of purchases.

### 1.1.4.2 Exemptions - 01 NCAC 05B.1601

Rule 01 NCAC 05B. 1601(a) provides a list of goods and services that are not required to be purchased through P&C:

- a) Purchase of liquor
- b) Perishable articles such as fresh meats
  - i. However, 01 NCAC 05B.1601(c) provides that contracts for bakery products and dairy products shall be awarded through P&C if the purchase exceeds an agency's general delegation.
- c) Published books, manuscripts, subscriptions to printed material, packaged copyrighted software products, and like materials
- d) Services provided by individuals by direct employment contracts with the state
- e) Public utility services (gas, water, and electricity)
- f) Telephone and cable services furnished by those companies
- g) Services provided which are subject to published tariff rates as established by the N.C. Utilities Commission
- h) Services which are merely incidental to the purchase of supplies, materials, or equipment such as installation services
- i) Contracts for construction of and structural changes to public buildings
- j) Personal services provided by a professional individual on a temporary or occasional basis using their professional skills to perform a professional task. This includes consultants, doctors, dentists, attorneys, architects, engineers, scientists, performers of the fine arts, and similar professions.
  - i. NOTE: Although this language remains in the rule, G.S. 143-48.6 requires that these contracts be handled the same as other service contracts. This exemption is no longer valid.
- k) Services provided directly by an agency of the state, federal or local government, or its employees, when performing the service as a part of its normal governmental function

### 1.1.4.3 Other Exemptions - NCAC 05B .1601(b)

In addition to products and services exempted by statute, NCAC 05B .1601(b) provides that the SPO may exempt other products and services from purchase through P&C provided that the SPO finds both conditions below true:

- 6) Competition will not enhance the price that the state would receive for the product or service.
- 7) Competition will not enhance the quality of the product or service that the state would receive.

Currently, the following items are exempted from P&C pursuant to 01 NCAC 05B .1601(b):

- **Repairs (Non-Construction):** Using agencies are authorized to purchase minor repairs from the private sector, regardless of cost.
  - NOTE: Structural changes made to or in agency buildings shall be handled by the State Construction Office in accordance with the construction statutes and rules applicable to each agency. P&C does not handle these contracts unless otherwise specified.
- **Animals, Poultry, and Fish:** Using agencies are authorized to purchase animals, poultry, and fish.
- **Feed:** Using agencies are authorized to purchase feed, including special ingredients for animals, poultry, and fish.
- **Athletic Apparel:** Using agencies are authorized to purchase athletic apparel. Safety concerns for the athletes should remain within the using agency and its subject matter experts.
- **Aircraft Maintenance:** Using agencies are authorized to purchase aircraft maintenance and repair (see *Repairs (Non-Construction)*) whether unexpected or scheduled. This does not include the purchase of equipment, materials, or supplies for the aircraft that are separate and apart from the maintenance or repair being performed.
- **Playground Equipment (Structures):** Using agencies are authorized to purchase and install playground equipment when handled as a goods purchase versus a construction project.
- **Ready-Mix Concrete:** Using agencies are authorized to purchase ready-mix concrete for a good, not a construction project.

### 1.1.4.4 Across the Counter Purchases

The purchase of items for “across the counter” resale by an agency is not handled through P&C. 01 NCAC 05B .1508. However, such purchases, even if channeled through bookstores or other internal supply sources including stockrooms and warehouses, are to be made in accordance with state procurement rules, including:

- 1) Using State Term Contracts (STCs)

- 2) Seeking competition (if not purchased from an STC) when the solicitation is expected to exceed \$25,000, including utilizing the P&C solicitation documents and the state's standard terms and conditions
- 3) Advertising the solicitation on the P&C's electronic bid system when the solicitation exceeds the general delegation or bid value benchmark
- 4) Waiver of competition documentation, if competition is not sought

## 1.2 Procurement Thresholds

There are three procurement thresholds:

- small purchase
- informal
- formal

The differences between these and the conditions under which they control are explained herein. The categories provide dollar thresholds that govern agency procurement authority and the methods required to procure goods and services.

### 1.2.1 Small Purchases

Small purchases are those that are valued at \$25,000 or less, including the amount of any extensions or renewals. Small purchases are addressed in 01 NCAC 05B .0301 and are subject to the following rules:

- STCs shall be used for small purchases if applicable and mandatory. STCs that are deemed for use as "convenience" may be used for any purchase, including small purchases. All goods and services covered by STCs shall be purchased in accordance with the instructions in those contracts.
  - The P&C contract administrator for the STC should be consulted by the using agency when a special type of good or service not already included on the STC is needed.
- Agencies may post small purchase solicitations on P&C's electronic bid system and may use solicitation templates provided by P&C. Agencies may also use NC eProcurement's collaborative requisitioning function in order to seek vendor quotes. Neither of these systems is required for small purchases.
- Agencies should monitor small purchases to protect against system abuse and to ensure that the value received by the agency is commensurate with the amount spent.

Agencies should follow their internal policies for small purchases, which may include soliciting at least three competitive quotes or bids. Additionally, agencies should develop initiatives to encourage and promote the use of HUB vendors. Agency executive officers shall develop written procedures for the administration of small purchases. Agencies shall provide these procedures to the SPO upon request.

## 1.2.2 Informal Purchases

Informal purchases are those that are valued between the small purchase benchmark of \$25,000 and the agency's general delegation or university's bid value benchmark, including the amount of any extensions or renewals. Informal purchases are addressed in 01 NCAC 05B .0301 and are subject to the following rules:

- STCs shall be used for informal purchases if applicable and "mandatory." STCs that are deemed for use as "convenience" may be used for any purchase, including informal purchases. All goods and services covered by STCs shall be purchased in accordance with the instructions in those contracts.
  - The P&C contract administrator for the STC should be consulted by the using agency when a special type of good or service not already included on the STC is needed.
- Informal purchases must contain the state's standard terms and conditions. To accomplish this, agencies have several options to pursue solicitation requests to vendors:
  - Utilize the NC eProcurement system to post informal purchase solicitations.
  - Utilize the NC eProcurement system's collaborative requisitioning function.
  - Issue a Request for Quote (RFQ) directly to at least three vendors.

Solicitations resulting in award of a contract shall be reviewed, approved, and executed by the approving agency, as documented in their procurement policy.

Agencies shall solicit at least three competitive quotes or bids. Additionally, agencies should develop initiatives to encourage and promote the use of HUB vendors. Agency executive officers shall develop written procedures for the administration of informal purchases. Agencies shall provide these procedures to the SPO upon request.

## 1.2.3 Formal Purchases

Formal purchases are those that are valued above the agency's general delegation, including the amount of any renewals or extensions. Formal purchases are addressed in 01 NCAC 05B .0301 and are subject to the following rules:

- STCs shall be used for formal purchases, if applicable and "mandatory." STCs that are deemed for use as "convenience" may be used for any purchase, including formal purchases. All goods and services covered by STCs shall be purchased in accordance with the instructions in those contracts.
  - P&C contract administrator for the STC should be consulted by the using agency when a special type of good or service not already included on the STC is needed.
- Procurements that exceed an agency's general delegation are required to have P&C review and approval prior to posting and prior to awarding the contract.
  - Solicitations that require reviews and approvals will be processed through NC eProcurement or through the Procurement Information Portal (PIP) for

waivers of competition and non-users of NC eProcurement.

- Formal purchases must contain the state's terms and conditions. To accomplish this, agencies have limited options to advertise solicitations to vendors:
  - **NC eProcurement System, Ariba Sourcing Module** – Post formal purchase solicitations on the NC eProcurement sourcing system using an IFB or RFP state document.
  - **Interactive Purchasing System (IPS)** – Post formal solicitations in the IPS using an IFB or RFP. This option is only available for non-Ariba Sourcing users.
  - **Request for Quote (RFQ)** – Issue an RFQ document directly to one or more vendors. This option is only available for approved Waivers of Competition.

Solicitations resulting in award of a contract shall be reviewed and approved by P&C prior to the agency or university executing the contract. Agencies should develop initiatives to encourage and promote the use of HUB vendors.

### 1.2.4 Determining Contract Value

A contract's value shall be determined cumulatively. The value of the original contract period, along with any renewal options, extensions, and amendments shall be included in determining the contract's value.

### 1.2.5 Contract Term

The contract term, or length, shall not be for more than three years, including all extensions and renewals, without the prior approval of the SPO or its designee. The determination will be based on whether the longer period would be advantageous to the state.

All requests for extended contract terms must be submitted for approval. Requests must be approved prior to posting.

## 1.3 Identifying the Need (Goods and Services)

The purchasing agency or university procurement office shall be responsible for developing internal policies to identify and define the entity's procurement needs. Together, the procurement office and business owners have a fiduciary responsibility to procure goods and services using good judgment, as well as proceeding in accordance with all statutes, rules, policies, and procedures that govern public procurement practices.

Identifying needs should result in a documented business justification to procure the goods and services.

### 1.3.1 Goods

Goods means all non-IT related goods, including equipment, materials, or supplies requested for purchase. 01 NCAC 05A .0112(16) defines goods to mean "any tangible property, including all equipment, materials, supplies and commodities."

A goods contract is further defined as “any agreement involving the Procurement of Goods from a Vendor, but which may also have ancillary Services aspects.”

If it appears that the acquisition of used equipment, materials, or supplies is in the public interest, competitive procedures shall be followed wherever feasible. Used goods may be sourced when they are available on short notice, are needed for the disabled, or where waivers of competition, emergency, or pressing needs may be justified. 01 NCAC 05B .0602. The solicitation document may or may not include a request for prices on like new products, but in either case acquisition may be made on the basis of whichever is considered most advantageous for the intended purpose. Confirmation should be made that the price of the used equipment is reasonable with respect to its age and condition.

## 1.3.2 Service Contracts

Service contracts are those contracts awarded for providing specified tasks or duties, including repair work or programs, undertaken by a vendor to fulfill requirements and specifications of a contract. A service contract may also include incidental goods such as new parts or reports.

### 1.3.2.1 General Service Contracts

Service contract is defined in 01 NCAC 05A.0112(36) as:

Any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, expertise, or similar capabilities in the Vendor. Includes contracts for Consultant Services and Personal Services and may also involve the ancillary purchase of Goods.

Contracts and amended contracts for the provision of certain personal services (as defined in the statute) shall be subject to the same review and approval requirements for other services contracts. GS 143-48.6.

The services may include (by way of illustration, not limitation) maintenance of buildings or equipment, auditing, film production, employee training, and food service, provided the service is not primarily for review, analysis, or advice in formulating or implementing improvements in programs or services, in which case rules relating to consultant contracts shall be applicable.

**Rental Contract:** A contract for the right to use a good or product for a period of time, usually with payments made at intervals over the usage period, and normally providing short notice for cancelation. Contracts for the rental of goods shall be handled pursuant to the same rules applying to the outright purchase of goods. Rental agreements shall not include an option or obligation to purchase the good. (See *Lease Purchase Contract*).

**Lease Purchase Contract:** Used when the decision for outright ownership is uncertain or when delays of ownership are intended. Options or obligations to purchase before or at the end of the contract term shall be provided. Third party financing is not used. Ownership transfers only if goods are purchased. Contracts may include an option to upgrade goods during lease periods without rebidding the contract. Outright purchases shall employ the same rules as lease purchase contracts.

**Installment Purchase Contract:** Term used only when ownership of a commodity at time of possession is intended. Third party financing is used in most cases. It creates a security interest in the property purchased to secure payment of the purchase price to the seller or to an individual or entity advancing money or supplying financing for the purchase transaction. If the commodity is on a term contract and third-party financing is being utilized, then the commodity is to be purchased from that contract. If the commodity is on a term contract but third-party financing is not being utilized, the commodity would not be considered on the contract since some form of financing would be necessary. The purchase of the commodity would be handled by the agency if valued less than their delegation or by P&C if valued more than their delegation. When third party financing is involved and the commodity is not on a term contract, the contract for the commodity is handled first and must include a provision that award of the contract is contingent upon obtaining satisfactory financing. The financing contract should also include an option for early payment without penalty.

### **1.3.2.2 Professional Service Contracts**

Professional Services is defined in 01 NCAC 05A .0112(25) as:

Contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications, who provides ongoing Services. A Professional Services Contract is a type of Service Contract.

These services may include (by way of illustration, not limitation), the ongoing services performed by a doctor, attorney, engineer, nurse, architect, scientist and production or program service providers performing a distinct service deliverable, provided that the service is not primarily for review, analysis or advice in formulating or implementing improvements in programs or services, in which case the rules relating to consultant contracts shall be applicable.

### **1.3.2.3 Consultant Service Contracts**

Consultants provide analysis or advice in formulating or implementing improvements in programs or services. These contracts require a unique approval process set forth in 01 NCAC 05D.

Agencies requesting consultant services shall submit a letter of endorsement by the agency secretary and a written justification to P&C. 01 NCAC 05D .0203. At a minimum, this justification shall contain:

- 1) What services the agency desires to secure
- 2) Why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency
- 3) How the work to be performed relates to the proper functions of the agency
- 4) What benefits the agency expects to receive from the consultant's services
- 5) What the agency estimates to be the cost of the services sought

- 6) What potential sources of consultant services, if any, the agency has identified
- 7) A letter of endorsement for the proposed contract from the agency head or designee

If the agency is requesting authority to contract for consulting services outside of state government, it shall also detail what potential sources of those services exist within state government and explain why the desired services are not available from those sources. 01 NCAC 05D .0203. P&C and the governor's office shall approve outside consultants prior to contract solicitation and again prior to contract award.

All requests for consultant contracts must be submitted for approval. Approval must be received prior to posting.

#### **1.3.2.3.1 Review of Agency Requests**

The documents submitted by agencies requesting authority to retain consultants will be reviewed by P&C. 01 NCAC 05D .0204. Upon completion of this review, the requesting agency will be advised, subject to such conditions as may be prescribed by the governor or designee, to:

- 1) Canvass additional sources within state government
- 2) Solicit proposals from a private contractor
- 3) Sign negotiated contracts without competitive proposals if P&C and the governor have determined any of the following:
  - Performance or price competition is not available
  - The service is required for an authorized cooperative project conducted with governmental units, or public or private nonprofit organizations
  - The contract price is too small to justify soliciting competitive proposals
- 4) Abandon the project for being outside the scope of agency responsibilities or for having no financial benefit to the state relative to the potential expenditure of funds.

#### **1.3.2.3.2 Contracting for Consultant Services**

**Competitive Proposals:** Agencies which receive approval to solicit proposals for consultant services shall:

- 1) Prepare the appropriate solicitation document in accordance with the rules and disseminate among prospective service providers
- 2) Circulate the solicitation document to sources of consultant services as may be identified by P&C, as well as the sources identified by the requesting agency
- 3) Publicly open all proposals received
- 4) Forward the award recommendation and supporting documentation to P&C for review
  - a) After P&C's review, the recommendation shall be forwarded to the governor's office for approval. The requesting agency shall be notified in writing by the governor's office that either:

- i. The agency head is authorized to execute contracts with one or more approved service providers
- ii. All proposals have been rejected

01 NCAC 05D .0205.

### **1.3.2.3.3 Negotiated Consultant Contracts**

Agencies receiving authorization to enter negotiated contracts for consultant services without soliciting competitive proposals shall submit the proposed contracts to P&C for review and approval prior to executing the contract, utilizing the same process as a waiver of competition. 01 NCAC 05D .0204(3) and .0206.

Upon completion of this review, the requesting agency shall be notified in writing by the governor's office that the approved contract(s) may be executed by the agency head.

## **Section 2: Procurement Methods and Considerations**

### **2.1 Procurement Methods**

Once a need is determined by a user at an agency, the user will submit a requisition through the agency's purchasing office. Acquisition methods usually fall within one of the subsections below.

#### **2.1.1 Procurement Expenditures**

The appropriate procurement method is determined by the dollar value of the procurement. When the dollar amount of an expenditure is less than an agency's general delegation the procurement is handled independently by the agency in accordance with its established procurement policy.

When the dollar amount of an expenditure exceeds the agency's general delegation, P&C must review and approve the solicitation prior to posting and again prior to award. This is true for all goods and services procurements, unless the purchase is covered by an existing STC, purchasing preference, statutory exemption, special delegation, or other exemption.

##### **2.1.1.1 Small Purchases**

A small purchase is defined as the purchase of goods or services, not covered by a term contract, involving an expenditure of public funds valued at \$25,000 or less. Because small purchases are typically less than an agency's general delegation, they can be made by agencies directly, without P&C involvement. The agency's executive officer shall set forth procedures for making small purchases.

An agency's executive officer may set an internal benchmark for small purchases that is less than \$25,000, but small purchases shall not exceed \$25,000. The awarding of contracts for small purchases shall be the responsibility of the purchasing agency. The SPO may require that a copy of the small purchase procedures be sent to P&C. The use of competitive quotes or bids is preferred, whenever practical.

## 2.1.2 Procurement Card (P-Card)

Procurement cards (P-Cards) are for official use only and shall be used in accordance with the guidelines established in the STCs maintained by P&C. All other procurement rules and policies also apply to P-Card purchases. Agency use of P-Cards is contingent upon satisfactory compliance reviews, as determined by P&C.

### Transaction limits for state agencies and state departments

Each transaction on a P-Card is not to exceed \$5,000 for general purchases and \$25,000 for travel purchases. Agencies may set lower internal limits for all purchases or specific types of purchases. Purchases can be limited by amount per transaction, total per period, number of purchases per period, Merchant Category Codes (MCC), and in many other ways. Each card can have specific controls unique to that cardholder's responsibilities. Exceptions to this limit are described in 01 NCAC 05B .1523.

### Transaction limits for other eligible entities

Other eligible entities may set limits for all purchases or specific types of purchases. Purchases can be limited by amount per transaction, total per period, number of purchases per period, Merchant Category Codes (MCC), and in many other ways. Each card can have specific controls unique to that cardholder's responsibilities. Other eligible entities should develop a P-Card manual specific to their organization and monitor card usage on a regular basis to ensure cards are being used appropriately.

Per-transaction limits of P-Card purchases may be changed only pursuant to the following circumstances:

- a) Agency card program administrators may request higher limits on cards in emergency situations, per governor declaration. 01 NCAC 05B .1602. Such increases shall be in effect no longer than the duration of the emergency. Requests for increased limits shall be made through P&C if time permits and shall be reported to P&C in any case.
- b) Agencies may apply to the SPO for higher limits on specific transactions or types of transactions, with prior justification.
- c) The SPO may adjust limits based on analysis of the P-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.

Participating agencies shall designate a P-Card program administrator, who shall be the chief purchasing officer or chief fiscal officer (or their designee).

- a) All cards requested on behalf of agencies shall be sent to the program administrator (not to individual cardholders) by a traceable delivery method.
- b) All cards shall show the agency name, an individual cardholder's name, the state seal, or agency logo, and indicate they are for official use only.
- c) The individual cardholder named on a card shall be responsible for its possession and use. 01 NCAC 05B .1523.

For a Procurement Card Single Transaction Limit Increase Request, please visit the Procurement Information Portal (PIP) and submit the appropriate form. Contact the STC administrator for questions about P-Card usage.

### **2.1.3 Open Market Solicitations**

An open market solicitation is the fair and open solicitation of offers for the purchase of a good or service, not otherwise covered by a term contract. Competition shall be reasonable and adequate for the amount of the expenditure and the specific requirement. Rule 01 NCAC 05B .0301 sets out the requirements for formal and informal solicitations.

### **2.1.4 Statewide Term Contracts**

A “term contract” is a contract where 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.”

Statewide Term Contracts (STCs) are established by P&C for state agency use and in certain situations for use by other entities, such as municipalities. STCs are competitively bid. During the process of establishing STCs, P&C considers several factors, which include:

- 1) Which items are most used or purchased by the state
- 2) Whether lower prices can be obtained through volume discounts
- 3) Whether transportation costs are included in the pricing
- 4) Whether warranties may be included in the contract
- 5) The availability of online catalogs within NC eProcurement for order processing efficiency

01 NCAC 05B .1102.

The pricing and terms for each STC are available on the P&C website. All goods and services covered by an STC must be purchased in accordance with the established priority from above and with instructions for that contract. For example, some STCs may specify a minimum or maximum quantity or dollar value for each order. Read each contract carefully prior to ordering. Orders valued less than any minimum quantity indicated on the contract synopsis shall be obtained in accordance with normal agency procurement procedures. Orders that exceed any maximum quantity shall be forwarded to P&C for processing.

In situations where a special item or service is needed for a particular application, the state purchasing administrator who administers the STC should be consulted for appropriate action.

If a waiver, emergency purchase, or pressing need arises, STC suppliers should be given the opportunity to satisfy the requirement, if the needed goods or services are covered by an STC and if time permits such action.

### **2.1.4.1 Mandatory versus Convenience**

#### **Mandatory STCs**

Mandatory STCs shall be used by state agencies, departments, institutions, universities, and community colleges, unless exempted by statute or rule. Other entities, including schools and local government, may use these contracts, as provided in the contract. 01 NCAC 05B .1101; G.S. 143-49.

#### **Convenience STCs**

Convenience STCs **may** be used by state agencies, departments, institutions, universities, community colleges, and other entities, including schools and local governments, as provided in the contract. G.S. 143-49.6.

### **2.1.4.2 Abnormal Quantity**

When an agency's STC requirements exceed the dollar amount maximum set forth in an STC, that order shall be forwarded to P&C for processing. P&C, in its sole discretion, may handle the request in one of the following ways:

- 6) The purchase may be authorized at the current level of pricing with the current STC vendor(s).
- 7) Additional discounts from the current level of pricing may be negotiated with the current contract vendor.
- 8) A separate solicitation may be issued for the procurement.

### **2.1.5 Agency Specific Term Contract**

An agency specific term contract is a "requirements contract" or "indefinite quantity contract" established for use by a specific agency when the needed goods or services are not otherwise covered by an STC.

Agency specific term contracts are established by the purchasing agency. They shall be reviewed and approved by P&C when the expected expenditures exceed the agency's general delegation.

### **2.1.6 Waiver of Competition**

Competition may be waived for a solicitation pursuant to the specific conditions listed in 01 NCAC 05B .1401. Competition may also be waived if deemed to be in the public interest by the SPO or by the agency if the expenditure is valued less than the agency's general delegation.

Those situations in which a waiver is appropriate are listed below and shall be documented with a signed and dated request from the agency and a signed and dated approval from the SPO or agency Procurement Chief, depending on whether the request exceeds the agency's general delegation.

When seeking a waiver, the request shall identify those specific facts or circumstances that support a waiver; simply repeating the language of the applicable category is not sufficient. A clear justification should include information around the applicable waiver condition with supporting evidence of why the waiver applies to the specific procurement endeavor, indicating the business purpose of the good/service, who will use the good/service, and options for not obtaining the specific waiver. A waiver should also be supported by any manufacturer documentation and market research.

**Example:**

An agency requests to purchase Brand X spectrometers from Vendor Y.

**Unacceptable justification:**

Vendor Y is the only available source of supply for Brand X.

**Acceptable justification:** An agency lab performs critical analyses for the presence of minute amounts of certain chemicals, and the instruments used shall be precise and well-calibrated. To give predictable results across samples, the lab has standardized Brand X spectrometers with seven currently in use at its facility. Brand X warrants the accuracy of its equipment only if it is sold and serviced by an authorized dealer. Vendor Y is the only vendor authorized to provide service in North America. Attached is the authorized dealer letter from the manufacturer to support the justification.

### 2.1.6.1 Waiver of Competition Conditions

Pursuant to the Administrative Code, agencies may waive competition where:

- 1) Performance or price competition is not available
- 2) A needed product or service is available from only one source of supply
- 3) Emergency action is indicated
- 4) Competition has been solicited but no satisfactory offers received
- 5) Standardization or compatibility is the overriding consideration
- 6) A donation predicates the source of supply
- 7) Personal or particular professional services are required
- 8) A particular medical product or service, or prosthetic appliance is needed
- 9) A good or service is needed for the blind or severely disabled and there are overriding considerations for its use
- 10) Additional products or services are needed to complete an ongoing job or task
- 11) Products are bought for "over the counter" resale
- 12) A particular product or service is desired for educational, training, experimental, developmental or research work
- 13) Equipment is already installed, connected and in service, and it is determined advantageous to purchase it
- 14) Goods are subject to rapid price fluctuation or immediate acceptance

- 15) 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
- 16) The amount of the purchase is too small to justify soliciting competition or a purchase is being made and a satisfactory price is available from a previous contract
- 17) The requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s)
- 18) Used good(s) is available on short notice and subject to prior sale

Depending on dollar value, competition may also be waived by the SPO or the agency if a waiver is deemed to be in the public interest. 01 NCAC 05B .1401.

### **2.1.7 Brand Specific Requests**

Brand specific rationale can be used only when the requirement can be met by the exact specifications offered by a particular piece of equipment made by the manufacturer. A brand specific justification must explain why the product is singularly able to meet the requirements of the user and most conclusively support the determination that no other product can fulfill the user's needs. Common examples include standardization and compatibility with existing equipment/systems or where a specific product is required to complete an ongoing task.

### **2.1.8 Emergency Purchases**

An emergency is a situation that endangers lives, property, or causes the immediate discontinuation of a vital program such as those essential for health and safety and which can be rectified only by immediate on-the-spot purchase (or rental) of goods or services. 01 NCAC 05B .1602.

In an emergency, agencies should negotiate with potential vendors in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer shall be issued, including standard terms and conditions, unless circumstances prohibit their use.

When an emergency action is necessary and the expenditure exceeds the agency's general delegation, prior verbal approval should be obtained from P&C, if time permits.

Subsequently, whether or not prior approval was possible, an explanation of the emergency purchase shall be reported in writing to P&C if the expenditure is over the agency's general delegation. If under the agency's general delegation, documentation shall be included in the agency's procurement file.

### **2.1.9 Pressing Need**

A pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work. Lack of reasonable forethought or planning is not justification for a pressing need. G.S. 143-57 and 01 NCAC 05B .1602.

When pressing need action is necessary, and the expenditure is over the agency's benchmark or general delegation, prior verbal approval shall be obtained from P&C, if time permits. Circumstances demonstrating the pressing need must be described in the request. Subsequently, whether or not such prior approval was possible, if the expenditure is over the agency's delegation, an explanation of the pressing need purchase shall be reported in writing to P&C. If under the agency's delegation, documentation shall be included in the agency's procurement file.

Agencies should negotiate with potential vendors in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer shall be issued, including standard language, and terms and conditions issued by P&C, unless circumstances prohibit their use.

## **2.2 Grant Funded Contracts**

### **2.2.1 Conditional Grants**

Where a grant, donation, or special discount is predicated upon making a purchase from the grantor, the proposed transaction shall be explained in writing and shall have prior approval of the SPO. 01 NCAC 05B .1506. Prior to approval, the SPO shall consider the conditions placed on the grant, donation, or special discount, and how they will affect the agency and the state, the cost of agreeing to such conditions, and the market conditions.

When a donation from a private source is predicated upon making the purchase or lease from a specific source, the purchase or lease may be made without prior approval of the SPO or Secretary. This only applies if the donation from the private source covers 100% of the purchase price.

### **2.2.2 Federal Grants**

A federal grant is an award of financial assistance, the principal purpose of which is to transfer a thing of value from a federal agency to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States. A grant is distinguished from a contract, which is used to acquire property or services for the federal government's direct benefit or use. When the government is procuring goods or services for its own direct benefit, and not for a broader public purpose, the law requires use of a federal contract.

If an agency receives grant money to pay for a contract, the agency must consider the nature of the relationship with the contractor. Is the relationship a vendor relationship or a sub-recipient relationship? Sub-recipient is defined as a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency.

Vendor is defined as a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program.

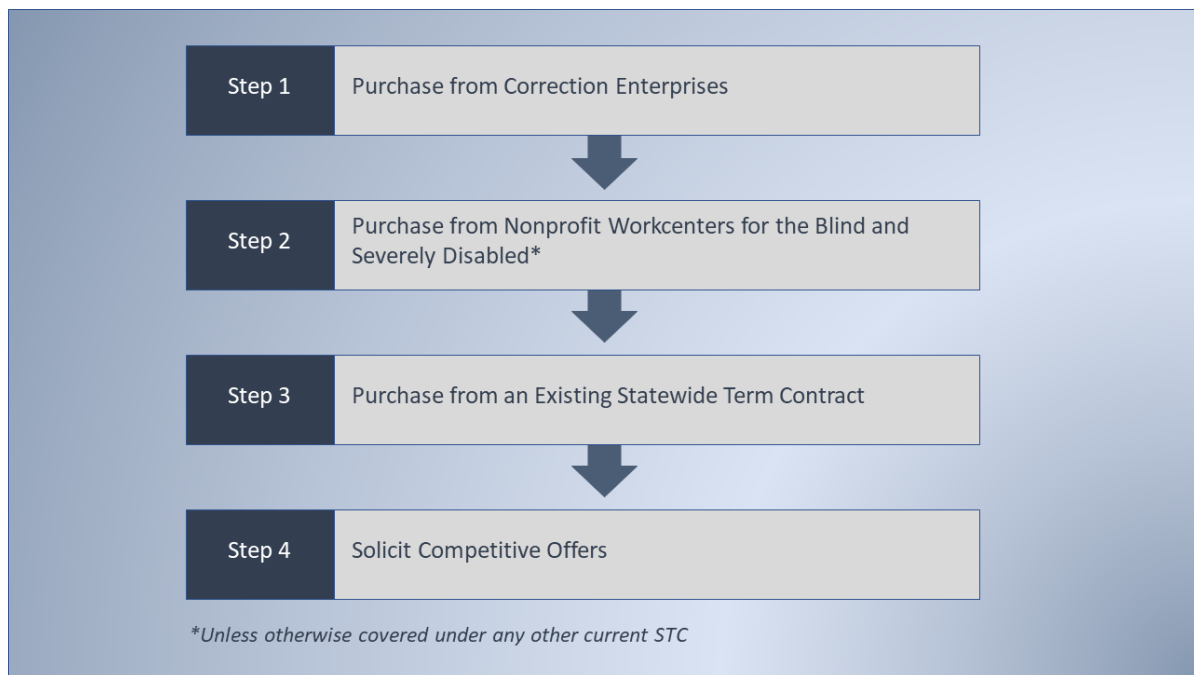
If the relationship is that of a sub-recipient, then federal guidelines and cost principles must be followed. Federal grants have specific compliance requirements which are outlined in

the “Audits of States, Local Governments and Nonprofit Organizations” provided by the United States Office of Management and Budget. Agencies are encouraged to ask federal agencies administering the particular grant programs to identify essential and mandatory clauses that should be used in the state’s sub-recipient agreements. It should be noted that state agencies distributing grant funds have an obligation to ensure that sub-recipients adequately perform all agreed-upon services.

Sub-Recipient	Vendor
<p><b>Sub-recipients</b> are non-federal entities expending federal awards from pass-through entities performing federal programs. Federal agencies may award sub-recipients directly, but not beneficiaries of such programs.</p>	<p><b>Vendors</b> are prime and/or independent contractors, suppliers, bidders, companies, firms, corporations, partnerships, individuals, or other entities responding to solicitations.</p>

## 2.3 Purchasing Preferences

There are a number of purchasing preferences that should be considered prior to issuing a solicitation.



### **2.3.1 Correction Enterprises**

The Department of Public Safety Correction Enterprises has a preference statute that controls the sale of prison industry products and prohibits their sale to the private sector. G.S. 148-134. Pursuant to this statute, all agencies shall give preference to products made by Correction Enterprises, which are manufactured or produced within the state prison system and offered for sale to state entities by the Department of Public Safety. This preference requirement also applies to all community colleges. This preference is provided for all procurement dollar thresholds.

Products available from the private sector, that are also offered by Correction Enterprises, shall be purchased from the private sector only when it is determined that the Correction Enterprises product will not satisfy the standard specifications or the reasonable requirements of the entity or the goods will not be available when needed. The procurement file should contain documentation from Correction Enterprises stating that the item(s) cannot be supplied. Competitive bidding shall not apply to goods available from Correction Enterprises.

### **2.3.2 Nonprofit Work Centers for the Blind and Severly Disabled**

Session law 2021-180, Section 20.12 (a) through (c) amended G.S. 143-129.5 to require that P&C annually canvass nonprofit work centers for the blind and severely disabled to determine what goods and services they offer and to secure contracts to make those goods and services available to the state entities that require them.

G.S. 143-48.2 was also amended to require that state entities purchase from those contracts so long as:

- 1) The purchase of goods does not exceed the agency's general delegation.
- 2) The goods or services are not available from an STC.
- 3) The goods are not available from Correction Enterprises.
- 4) The goods or services must be of suitable price and quality, as determined by the agency.

Where needed goods or services are not available from Correction Enterprises, state entities must determine whether those items can be supplied pursuant to the STC established with the nonprofit work centers for the blind and severely disabled.

## **2.4 Other Considerations**

### **2.4.1 Use of Purchasing Power for Private Purposes**

The purchasing power of the state or its agencies shall not be used for private advantage or gain. Purchases under contracts made by the state or the agency shall not be allowed for personal use or ownership by an employee or other individuals. G.S. 143-58.1(a). Violation of this provision is a Class 1 misdemeanor. G.S. 143-58.1(b). However, there are two exceptions provided by G.S. 143-58.1(b):

- 1) The agency through which the goods or services are procured has established policies and procedures permitting such purchases in order to provide for the mutual benefit of such persons and the agency, or for the public benefit or convenience.
- 2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted to use the purchasing or procurement procedures.

## **2.4.2 Auctions**

Auctions are a means by which an entity can purchase items offered for sale to the highest bidder. If buying an item that is not covered by an STC and the dollar amount is under the agency's general delegation, the executive officer of the agency may authorize purchase through auction. Auction purchases must otherwise follow procurement rules and processes.

If the dollar expenditure is over the agency's general delegation, then prior approval to participate in the auction must be obtained from the SPO, unless it is for an emergency or a pressing need purchase. Those purchases would then be governed by the rules applying to Emergencies and Pressing Needs, as discussed above.

## **2.4.3 Reverse Auctions**

Reverse Auctions are authorized by G.S. 143-49.1. Pre-qualified vendors are allowed to submit consecutive bids that lower the purchase price and costs of a given procurement until no further such reduction occurs. Agencies using this approach should refer to the established STC for appropriate procedures in the solicitation document to help clarify how the procurement will be conducted.

## **2.4.4 Cooperative Purchasing**

Where an agency is a participant in an approved cooperative project with another governmental entity or with a non-profit organization, that contract may be established pursuant to a waiver of competition. 01 NCAC 05B .1513.

Pursuant to 01 NCAC 05B.1513 the goods and services necessary for the cooperative project should be procured through normal processes unless the SPO permits one of the following alternative acquisition methods:

- 1) by making the acquisition on behalf of such governmental activity or charitable non-profit organization
- 2) by authorizing acquisition on the state's behalf under the provisions of G.S. 143.8
- 3) by authorizing acquisition on the state's behalf under the provisions of another state or another governmental entity, provided due consideration is given by the SPO to the differences in purchasing rules, regulations, and procedures of the contracting entity

Cooperative purchases with a governmental entity or a non-profit organization should still follow procurement rules, including use of solicitation documents, inclusion of standard

terms and conditions, and any additional processes dictated by the amount of a procurement expenditure.

## **Section 3: General Procurement Planning and Guidelines**

### **3.1 Preparing the Written Solicitation**

The solicitation documents are mechanisms through which agencies seek vendors to provide needed goods and services. The solicitation document provides the basic information of who, what, when, where, why, and how, which should be conveyed in a clear, concise, and logical sequence. The solicitation document must provide information about the procurement process, the goods and services being procured, and contract performance expectations if the vendor is selected for award.

P&C solicitation document templates provide this framework and are required for use in all informal and formal procurements. A copy of the posted solicitation document and each bid received into an official procurement file. 01 NCAC 05B .1903.

#### **3.1.1 Terms and Conditions**

P&C maintains and provides the North Carolina General Terms and Conditions for use in state contracts. These terms are written broadly in order to provide legal protection in a variety of procurements. All solicitations valued more than the small purchase of \$25,000 shall contain the North Carolina General Terms and Conditions.

In certain instances, the standard terms and conditions may be modified. Modifications to terms and conditions shall be approved by:

- The agency's legal counsel for contracts valued less than an agency's general delegation
- P&C's Contract Management Section (CMS) for contracts valued more than an agency's general delegation
  - Some entities are exempt from CMS review. Most notably, universities rely on their general counsel for review and approval of contracts. G.S. 114-8.3(b).

#### **3.1.2 Pre-Bid/Pre-Proposal Conferences or Site Visits**

When necessary, agencies should hold conferences or site visits with potential vendors as the first process of the timeline of the solicitation. While these conferences provide opportunities to emphasize and clarify complex or critical solicitation requirements, eliminate ambiguities or misunderstandings, and permit vendor input, agencies should consider whether attendance is required for a vendor to understand the solicitation and submit responses.

- Conferences or site visits should be conducted with potential vendors when issuing solicitations for complex or critical requirements.

- Attendance at conferences or site visits may be either:
  - Mandatory
  - Urged and cautioned (optional)
- Any conference or site visit requirements should be included in the solicitation document.
- At the conference or site visit, a sign-in roster should be provided.
  - The agency representative shall sign the attendance roster.
  - Only attendees who have arrived on time shall sign the attendance roster.
  - Attendees shall indicate on the sign-in sheet all of the parties they represent.
  - Late-comers may attend but shall not sign the attendance roster.
    - This is mostly relevant to mandatory conferences.
  - For mandatory site visits, only vendors who are represented on the attendance roster and who attend for the required duration of the site visit will be deemed to have met the attendance requirement.
- Addenda shall be issued to address vendor questions and any agency modifications to the solicitation resulting from the site visit.
- If adverse circumstances dictate, virtual conferences may be utilized. Agencies should ensure that accurate attendance is kept for the virtual conference. For example, vendors may be asked to put their information in the chat function, which can then be exported and saved to the official procurement file.

### 3.1.3 Response Time

Certain procurements require sealed offers, which are defined as offers that remain unopened until the public opening time stated in the Solicitation. 01 NCAC 05A .0112. Sealed offers are required for formal solicitations, but informal solicitations may also require sealed offers at the agency's choosing.

When sealed offers are required, the solicitation document will state the deadline for vendor responses to be received. The bid opening dates should provide vendors with ample time to respond. Sealed bid opening dates shall be no less than 10 calendar days from the date the solicitation is posted. NCAC 05B .0316(a). Complex requirements may require longer preparation times and should provide sufficient time for vendors to prepare a response.

### 3.1.4 Acceptance Period

In order to allow the state time to conduct the bid evaluation and any negotiations, vendors should agree to hold their bid open for a certain period of time. During this time the vendor must honor the terms of its bid submission, including pricing, if the state selects the vendor for contract award.

Bids should be valid for a minimum of 60 calendar days unless otherwise noted in the solicitation documents or the vendor's bid response. The acceptance period should be adjusted based on the subject matter of the procurement and whether negotiation is anticipated. Complex negotiations with sophisticated vendors can take weeks or months to complete.

### **3.1.5 Specifications**

"Specification" means any description of the physical or functional characteristics of, or the nature of, the goods or services to be procured. 01 NCAC 05A .0112. Specifications can either enhance or inhibit competition depending on how they are written. Goods and services specifications must be written to meet agency needs while maximizing competition and should not be overly restrictive or descriptive in favor of a particular Vendor's product.

Several specification categories are listed herein in the preferred order of use.

#### **3.1.5.1 Generic (Performance and Design)**

Buyers should analyze incoming requirements with a view towards soliciting the requirement on a generic specification basis. Generic specifications may be:

- a) Performance specifications, which set forth the performance requirements
- b) Design specifications, which set forth the essential characteristics of the items solicited

#### **3.1.5.2 Brand Name or Functional Equivalent**

When it is impractical to develop a generic specification, a brand name may be used to convey the intended style, type, character, and quality of the article desired. Unless otherwise provided in the solicitation document, the name of a certain brand, make, or manufacturer does not restrict bidders to the specific brand or manufacturer named.

Any offering which the state, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The solicitation should inform vendors, however, that the vendor must identify the equivalent product it intends to supply in its response.

#### **3.1.5.3 Brand Specific**

A brand specific specification restricts the acceptable products to those of one or more specified manufacturers. Brand specific rationale can be used only when the requirement can be met by the exact specifications offered by a particular piece of equipment made by the manufacturer.

Use of a brand specific specification must be approved in advance based on a written justification. Approval from P&C is required if the solicitation is expected to exceed the agency's general delegation. The agency must internally approve the justification if the procurement is valued less than the agency's general delegation. The approval should be documented in the official procurement file.

Brand specific specifications may be appropriate in situations such as:

- When the desired product must be compatible with or is an integral component of the existing equipment or products, or where prequalification of products is necessary to support specific needs of a program
- When a product is covered by a patent or copyright; when the product must yield absolute continuity of results
- When the product is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training

Upon solicitation, every effort must be made to obtain full competition among the resellers which carry a manufacturer's product. Protests may occur if written solicitations are ambiguous or inconsistent. Agencies should use caution when developing specifications in order to minimize the possibility of a bid protest.

### **3.1.6 Contract Pricing Structures**

There are several types of contract pricing structures available to procurements depending on the nature of a solicitation. The most common are discussed below.

#### **3.1.6.1 Fixed Price Contracts**

A fixed price contract is where firm unit or total prices are established upon contract award for goods or services. A fixed price contract may result from bidding or negotiation processes. They are used when specifications are clear, and costs are predictable. There is minimal risk to the purchasing agency when firm fixed price contracting is used because the financial requirements are known. This type of contract encourages efficient performance and is the least costly to administer. The use of firm fixed price contracting may be inappropriate if requirements or specifications are unclear or indefinite.

#### **3.1.6.2 Fixed Price with Escalation or De-Escalation**

This type of fixed price agreement provides for price adjustments up or down if specified contingencies occur. This type of contracting may result from bidding or negotiation processes. It is used to minimize fluctuations in vendor's prices due to unstable markets. The contract period is typically over a long period of time. The use of fixed price contracts with escalation or de-escalation reduces the need for contractors to inflate the cost of goods to offset unstable markets or economic conditions. The risk of cost increases or decreases is partially transferred to the buyer. Administrative costs may be increased as a result of the greater contract administration efforts that are required for this type of contract. Normally, any upward price adjustment should be justified and approved by the state prior to its effectiveness.

#### **3.1.6.3 Term Contracts**

Term contracts, also called "requirements contracts," are agreements for performance over a specified period of time, when quantities are indefinite. They have no fixed total dollar amount; rather, they are unit price based. They establish a framework under which goods and services are provided, but it is the degree of purchase order activity against the

contract that will ultimately determine the contract's total value. These contracts are typically established as State Term Contracts (STC) or agency specific term contracts.

Effective administration of these open-ended agreements requires that the agency maintain some record of purchasing activity against these contracts. Purchasing must have a means to capture, analyze, and report usage information, to allow for monitoring volume and discount opportunities. Purchase order activity must be periodically reviewed for compliance with the terms of the agreement. Contract expenditure activity should always be examined prior to the exercise of any renewal provision or re-solicitation.

### **3.1.6.4 Time and Materials (T&M)**

Time and materials agreements for goods or services are based on billable hours, which include overhead, profit, and materials. The details of the work are known, but the extent of the work may be unknown. T&M contracts are suitable for maintenance, design, engineering, and emergencies, among others. Competition is sought on the basis of labor-hour rate. These contracts may be expensive to administer. Whenever an agency uses a cost-reimbursement agreement such as T&M to acquire needed goods or services, it is essential that the cost structure builds in deliverable milestones and retainage percentages to allow for accountability in performance. Billed costs should be analyzed (and challenged when appropriate) prior to their approval for payment.

When a T&M agreement is used, agencies must request a detailed job estimate which should include the amount and type of contract labor with associated rates and itemized material costs to allow evaluation of the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiation or the solicitation of additional estimates may be considered, if permitted by the solicitation.

Contracts in which payment is calculated as cost-plus-a-percentage-of-cost are prohibited. G.S. 143-52(c).

### **3.1.6.5 Blanket Purchase Orders**

Blanket purchase agreements (BPAs) are contractual relationships to obtain small dollar value expendable operating supplies or services for which low or erratic demand usage exists. A set of terms and conditions are agreed upon between the buyer and seller wherein the seller will deliver, or permit pick up of, supplies ordered by the individual who has received authorization from the purchasing office. The prevailing market price, less any trade or volume discounts, as may be agreed upon, is charged and invoiced on a consolidated (usually monthly) basis.

The principal advantage of a BPA is the ability to delegate ordering authority to the user level, resulting in quicker access to the goods or services. Consolidated invoices are processed, which reduces the paper flow and administration. The success of this arrangement is dependent upon the establishment and enforcement of proper controls to monitor contract usage.

### 3.1.6.5 Cost Plus Percentage of Cost Contracts

Cost plus percentage of cost contracts are typically defined as contracts under which the vendor receives payment for indeterminate costs plus a stated percentage or amount of profit based upon such costs. This pricing structure may not be used for any purpose, except as provided in G.S. 18C-150. G.S.143-52(c).

### 3.1.7 Commodity Codes

The state utilizes the United Nations Standard Products and Services Code (UNSPSC), the global standard of commodity and service codes.

Standardized commodity codes are used to:

- Provide a standardized method of sourcing
- Identify the procurement as goods or services
- Provide electronic notification of bidding opportunities
- Identify term contract items
- Provide detailed history of commodity purchases
- Increase savings and efficiency for the state
- Analyze spend data

Correct commodity code usage will promote accuracy in reporting and provides P&C with the vital statistics needed to determine contract usage and vendor participation. Use of correct commodity codes is also a factor considered in compliance reviews.

Agencies may search for commodity codes by accessing the P&C website or the UNSPSC website. The NC eProcurement website Public Vendor Search allows North Carolina eProcurement registered vendors to be searched by commodity code.

**NOTE:** The IPS's six-digit commodity codes are derived from UNSPSC's eight-digit system. If you cannot find the desired commodity code in the IPS, search UNSPSC and use the first six digits of that result.

### 3.1.8 Payment Terms

Invoices shall be paid on time as agreed, typically no later than 30 calendar days after receipt of a correct invoice or acceptance of goods and services, whichever is later.

Using agencies are responsible for all payments to the contracted vendor. Solicitation payment terms shall comply with policies established by the Office of State Controller.

### 3.1.9 Evaluation Criteria

Evaluation criteria for award may be based on the lowest cost technically acceptable methodology or the Best Value Trade-Off method. Other factors to be considered must be identified in the solicitation document.

### **3.1.9.1 Lowest Cost Technically Acceptable Method**

For this evaluation method, the solicitation shall specify that the award will be made on the basis of the lowest evaluated price of those bids that meet or exceed the technical requirements. The solicitation shall provide the specifications that establish technical acceptability.

- 1) Trade-offs between price and non-price factors are not permitted.
- 2) Vendor responses are evaluated for acceptability but are not ranked using the non-price factors.
- 3) If applicable, clarifications, communications, and negotiations may be permitted after receipt of the offer.

### **3.1.9.2 Best Value Trade-Off Method**

The Best Value method of award is a trade-off method of source selection that is used when it is in the state's best interest to award to a response other than the lowest priced offer. Best Value is determined by evaluating which vendor response provides the best trade-off between price and performance. G.S. 143-52 and 143-135.9. For a solicitation using a trade-off source selection method, the following shall apply:

- 1) All evaluation factors that will affect the contract award decision and their relative importance shall be clearly stated in the solicitation.
- 2) Price must be considered as an evaluation factor in the selection process. The solicitation shall state the importance or numerical weight of all evaluation factors including price.
- 3) Offers are ranked using the evaluation factors and their relative importance or weight as defined in the solicitation document. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors.
- 4) For example, an offer with the lowest price when compared to other offers would normally receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced.
- 5) The evaluation criteria must be clear and concise regarding the ranking and how the evaluation will be performed (i.e., points or narrative of strengths and weaknesses).
- 6) If applicable, clarifications, communications, and negotiations may be permitted after receipt of the offer.

G.S. 143-52 also provides the following factors for award:

- Prices offered
- Best Value, as the term is defined in G.S. 143-135.9(a)(1)
- Quality of the articles offered
- General reputation and performance capabilities of the bidders

- Substantial conformity with the specifications and other conditions set forth in the request for bids
- Suitability of the articles for the intended use
- Personal or related services needed
- Transportation charges
- Date or dates of delivery and performance
- Such other factor(s) deemed pertinent or peculiar to the purchase in question

Additional award criteria may be included in the solicitation document, including, by way of example:

- Location and availability of service, repair facilities, and personnel
- References provided
- Demonstration of proposed equipment, if required

### 3.1.10 Transportation/Freight

The state shall require Free on Board (F.O.B.) Destination as the transportation/freight shipment method in the solicitation, unless in rare cases circumstances require an alternate method.

F.O.B. is a shipment term used to indicate whether the seller or the buyer is liable for goods that are damaged or destroyed during shipping. F.O.B. Destination means the seller retains the risk of loss until the goods reach the buyer. Including anything other than F.O.B. Destination in a contract could result in the state being responsible for the goods lost during shipping and having to pay for the goods even if they are never received. If the goods are destroyed in transit, agencies may also have to pay for replacement goods and could, in effect, end up paying twice.

When goods are shipped, purchase order numbers must be shown on packages and shipping manifests to ensure proper identification and payment of invoices. Shipments shall include complete packing lists. Ensure that these requirements are in the solicitation document and any resulting contract, so the vendor is aware of the requirements.

Suppliers shall not ship products until they have received an official purchase order from the agency. Agencies should review charges and compare them against award documents to determine if shipping costs are accurate and may be approved for payment.

**F.O.B. Destination** – It is the policy of the state to solicit bids for goods F.O.B. Destination, which means that the seller owns and assumes all risk for the goods until they are accepted at the designated delivery point. The cost of shipping the goods should be included in the quoted price or by the bidder or offeror as a separate line item, but the invoice amount cannot be more than the total bid price.

**F.O.B. Origin** – F.O.B. Origin means that the state takes ownership at the seller’s location and would be responsible for filing claims if the goods are damaged during shipment.

Before approving an invoice for payment, the agency should review it and compare it to the award document to determine if the shipping costs are accurate. If a charge on the invoice is not accounted for in the bid, it cannot be approved for payment.

### **3.1.11 Product Samples**

Requirements for product samples shall be clearly indicated in the solicitation document. Vendors shall furnish samples of items offered upon request, at no cost to the state (including shipping). Samples that are not destroyed shall be returned upon written request at the vendor's expense. Samples not returned to the vendor shall become property of the state. Samples shall be managed as follows:

- 1) Samples should be labeled with the:
  - a) Purchaser's name
  - b) Commodity
  - c) Solicitation number
  - d) Term contract number or quote number
  - e) The projected disposal date for the samples
- 2) Where testing is required, the person in possession of the test samples should return them as soon as possible after testing has been completed or dispose of them in accordance with the instructions provided in this section.
- 3) Sample items for term contracts shall be held for 90 calendar days following expiration of the contract.
- 4) The prompt return of samples to the vendor shall be the responsibility of the purchaser or engineer, if the vendor requests their return.
- 5) Samples released to the using agency by the vendor or unclaimed after 90 calendar days from completion of delivery shall be either put into use within the using Agency, transferred to another state agency, recycled, sold through State Surplus Property Agency, or discarded as trash.
- 6) The disposition of samples shall be documented in the official procurement file.

### **3.1.12 Vendor Presentations and Product Demonstrations**

If specified in the solicitation document, evaluators may request oral presentations or discussions with vendors to clarify the materials or services presented in the vendor's response. Presentations shall not be used to materially alter or expand the scope of the solicitation, and evaluators are not required to request clarification from vendors but may do so at their option. Failure to perform requested demonstrations may be grounds for disqualifying the response from further consideration.

The state may require vendors or their authorized representatives to demonstrate the exact offered models to ensure products are suitable for their intended use before contracts are awarded. Demonstrations shall be performed upon request at the agency's facility free of

charge to the state. Demonstration results shall be documented in the file and be considered in the evaluation.

## **3.2 North Carolina Procurement Initiatives**

In an effort to support the state's economy, solicitations should contain information regarding initiative to encourage the use of resident vendors and Historically Underutilized Businesses (HUBs).

### **3.2.1 North Carolina Resident Vendors**

In an effort to utilize the buying power of the state to encourage North Carolina companies to do business with the state, stimulate economic development, and create jobs in North Carolina, Executive Order 50, Enhanced Purchasing Opportunities for North Carolina Businesses, was issued. This Executive Order gives the North Carolina vendors opportunity to select the option to match the price of the lowest responsible nonresident bidder, if the North Carolina resident bidder's price is within 5%) or \$10,000, whichever is less, of the nonresident bidder's price. The North Carolina resident bidder will first be offered the contract and will have two business days to accept or decline the award based on the lowest responsible bidder's price.

### **3.2.2 HUB Encouragement and Participation**

Promoting and encouraging HUB participation in procurement opportunities is central to the economic growth and stability of the state. Pursuant to Executive Order 24, there is an expectation for all state agencies to pursue a goal of at least 10% of their total expenditures be with certified HUB firms. All cabinet agencies are required to work with DOA's HUB Office to develop a HUB utilization plan and a process to monitor progress. While this is limited to cabinet agencies, all departments, institutions, and agencies of the state should support this initiative.

It therefore becomes important for state entities to create opportunities for HUB vendors when researching procurement options. An area with great potential is procurements that are valued under an agency's general delegation or bid value benchmark. These procurements often fall under the small purchase and informal procurement processes which provide greater procurement flexibility.

Certified HUB vendors can be found on the HUB Office website and searched by commodity or by using the NC eProcurement Vendor Search function. For all solicitations valued above an agency's general delegation, HUB participation information shall be incorporated into the solicitation, and the agencies procurement office should work closely with the HUB Office to partner in initiatives.

## **3.3 Procurement Request Process**

Solicitations that are expected to exceed an agency's general delegation must be reviewed by P&C. There are two required review and approval processes for each solicitation, one prior to posting and one prior to award.

Prior to posting, a completed draft solicitation must be provided, to P&C for review. The submission of the review should follow the appropriate process based on use of NC eProcurement or the Procurement Information Portal (PIP) for non-Ariba agencies. The Preliminary Review Checklist should accompany the request and can be found in the NC eProcurement system or the PIP.

Verbal requests to P&C for approval to move forward with a solicitation are not acceptable substitutes for written requests, except for emergency or pressing need procurements, which require that written notification from the agency be sent to P&C following the procurement. 01 NCAC 05B .1602.

The assigned P&C Strategic Sourcing Team will review the solicitation request and determine the appropriate action for a solicitation based on the content of the procurement request. Communication from the Strategic Sourcing Team will be provided with either approval of the request, the need for further feedback or collaboration that is required for approval, or denial of the request with feedback explaining the reasoning and appropriate next steps.

### 3.4 Control Numbers

In addition to any unique identifier given to a procurement by the purchasing agency, procurements handled by P&C may be assigned a unique control number, which remains with the procurement file. The control number will be provided to the purchasing agency for reference.

### 3.5 Spend Analysis

Spend analysis is the process of collecting, cleansing, classifying, and evaluating procurement data to reduce procurement costs, improve efficiency, and monitor compliance. It can also be leveraged in other areas such as goods management, strategic sourcing, and other business domains including inventory management, budgeting, planning, and product development.

#### **There are several benefits to performing spend analysis:**

- More precise financial and annual reports
- Find opportunities to cut costs
- To create accurate, spend forecasts
- To spot unacceptable spending
- To manage risk and diversify vendors
- Improve strategic sourcing decisions
- Improve supply management

**Spend Analysis helps to answer the following questions:**

- With whom am I spending funds?
- Am I getting what I paid for?
- Is this purchase necessary?
- What am I really spending? Are there hidden costs?

<b>Core Areas of Spend Analysis</b>	<b>Explanation</b>
<b>Visibility</b>	<ul style="list-style-type: none"> <li>• Visibility refers to the ability of an organization to have a comprehensive view of the metrics that drive improved cost savings, process efficiency and supply-chain performance.</li> <li>• Spend visibility facilitates analyzing past spend that can be utilized for planning future expenditures.</li> <li>• Spend visibility goes beyond tracking spending as it gives both a detailed and holistic picture of how money is moving through an agency.</li> <li>• Spend visibility allows agencies to stay within budget by providing a real-time count of how much of their budget has already been spent.</li> </ul>
<b>Analysis</b>	<ul style="list-style-type: none"> <li>• Data should be analyzed to identify opportunities for cost savings and other procurement improvements.</li> <li>• Analysis allows agencies to ensure they have negotiated the best contract deals per supplier and to identify opportunities for modifying the number of suppliers per category or for negotiating better rates.</li> </ul>
<b>Process</b>	<ul style="list-style-type: none"> <li>• Process data shows areas for possible process improvements.</li> <li>• It provides information on the number of expected solicitations and provides for the identification of areas for process optimization.</li> <li>• This allows agencies to respond to solicitation development needs, identify vendors who routinely provide small purchases, and identify opportunities for streamlining purchasing processes.</li> </ul>

## Section 4: Procurement of Goods and Services

### 4.1 Scope of Work and Specifications

The primary purpose of a scope of work or purchase specification is to provide a basis for obtaining goods or services that will satisfy a particular need at an economical cost. Scopes of work or purchase specifications define the needs and specifications of a particular procurement and determine the appropriate procurement method.

North Carolina's procurement program is built on the principles of competition and transparency. For each procurement, purchasers should:

- Seek competitive offers from qualified and responsible supply sources, unless exempted by statute or rule
- Develop specifications that are designed to reasonably satisfy the agency's needs but are not unduly restrictive and will maximize competition
  - Specifications are the physical or functional characteristics of the goods or services offered by the vendor.
  - NOTE: Specifications should not be confused with requirements, which prescribe the process or procedure that a vendor must comply with to be deemed responsive and further considered for award.  
01 NCAC 05A .0112(29) and (37).
- Encourage competition in the open market, resulting in the best possible contract for the needed goods or services

### 4.2 Information Gathering Before Preparing a Solicitation

A Request for Information (RFI) is a document used to gather information from potential suppliers of a good or service. RFIs are used primarily as a planning and information gathering tool. RFIs are also used to identify industry standards, best practices, potential performance measures, and cost or price structures, or to generally ascertain the level of interest of prospective respondents.

Agencies are not required to use this information in developing future solicitations but may find vendor responses useful in that regard. When using RFI responses to develop solicitations, agencies should take care to avoid developing specifications that favor the vendors that responded to the RFI. While vendor-supplied information may be used to develop a solicitation, the solicitation document should not be directly based on any of the vendor's specifications, marketing data, or RFI response text so that no advantage is provided to any particular vendor. For example, do not cut-and-paste information from a vendor's RFI response into the solicitation.

## Request for Information (RFI)

- Provide as much information as practical to define the type of information that is being sought.
- Indicate it is not a solicitation, request for offer, or an offer; and that responding shall not result in a contract award.
- Does not include the North Carolina General Terms and Conditions because no contract formation is intended.
- Should include the following sections:
  - An overview of the desired good or service to be provided
  - Information requested from the vendor
  - Response expectations

### 4.3 Determining the Appropriate Solicitation Document

When developing a solicitation, it is critical to determine the appropriate procurement method because it will be a major factor in the planning process. For example, the average procurement lead time for an Invitation for Bid (IFB) can differ significantly from a Request for Proposals (RFP). The decision to issue an IFB or RFP depends on whether the goods or services required are clearly defined by the purchasing agency or whether the agency is looking to the vendor to propose a solution.

**Invitation for Bid (IFB)** - The IFB is a formal, written solicitation document used for seeking competition and obtaining offers for easily defined goods and simple services. This document contains the specifications, instructions to vendors, standard terms and conditions, and any additional information the vendor may need to provide a bid response. This document is typically used for open market bids, agency specific term contracts, and Statewide Term Contracts (STCs). An IFB is typically used with a “lowest price that meets the specifications” evaluation where cost is the most relevant factor, and an in-depth “Best Value” analysis is not needed. IFBs are required to be posted in the NC eProcurement system in order to solicit vendor responses.

In general, an IFB’s timeline is four to six weeks, depending on complexity. Agencies should allow for the time needed for review and approval by P&C.

**Request for Proposals (RFP)** - The RFP is a formal, written solicitation document used for seeking competition and obtaining offers for a solution-based proposal for goods and services, rather than just looking for pricing, as found in an IFB solicitation. This document contains a defined scope of work, instructions to vendors, standard terms and conditions and any additional information the vendor may need to provide a proposal response. The RFP should be used when the agency is relying on the vendor to propose a solution that will meet the agency’s needs and where price is not the only determining factor for award. This document is typically used for open market bids, agency specific term contracts and STCs. An RFP is typically used with a Best Value trade-off evaluation and must identify the

evaluation criteria on which the evaluation will be based. RFPs are required to be posted to the NC eProcurement system in order to solicit vendor responses.

In general, an RFP's timeline can be six to twelve weeks, depending on its complexity. Often this timeline can be extended for various reasons (i.e., complex questions and negotiations). Agencies should manage the timeline of expected award to allow for required reviews by P&C.

**Request for Quote (RFQ)** - The RFQ is used for non-advertised procurements. This document contains instructions for vendors, specifications, and terms and conditions. The RFQ may be used to solicit vendor responses pursuant to a waiver of competition, or it may be used for informal purchases that are valued at less than an agency's general delegation. An RFQ cannot be used as the basis for award when competitive bidding is required, such as for formal purchases that exceed an agency's general delegation. RFQs are issued to the intended vendors, using email, for response.

In general, an RFQ's timeline is flexible since there is no required posting or response time. Timelines within RFQs should account for the complexity of the request. Agencies should manage the timeline of expected award to allow for required reviews by P&C.

## 4.4 Determining the Appropriate Solicitation Method

In addition to determining the correct solicitation document for a specific procurement, it is essential to identify the process by which a procurement should be managed. This is based on the procurement's estimated cumulative contract value.

There are three thresholds for determining the solicitation method:

- 1) **Small Purchases** - valued less than the small purchase threshold
- 2) **Informal Purchases** - valued between the small purchase threshold and an agency's general delegation
- 3) **Formal Purchases** - valued in excess of an agency's general delegation

The characteristics of each are discussed below. These processes may vary where the procurement is the subject of a waiver of competition or falls under a special delegation, exemption, emergency, or pressing need.

Purchasing agencies should also determine whether the goods or services sought are available from Correction Enterprises or from a nonprofit work center for the blind and severely disabled.

### **NOTE: Legal Review of Contracts Valued Over \$1 Million**

Pursuant to G.S. 143-50.1, all proposed solicitations for "supplies, materials, printing, equipment and contractual services" with an estimated value exceeding \$1 million must be reviewed by the Contract Management Section of P&C prior to posting and prior to award, unless otherwise exempted by statute. Legal counsel should be included in the solicitation preparation process as early as possible to prevent delays.

#### 4.4.1 Small Purchases - \$25,000 or Less

A small purchase is a solicitation for goods or services, not covered by a term contract, involving an expenditure of public funds valued at \$25,000 or less, including all extensions and renewals. 01 NCAC 05B .0301. Competitive bids are not required for small purchases; however, purchasers can still seek multiple quotes.

P&C's review and approval is not needed for these small dollar purchases; thus, purchasing agencies shall create their own policies and procedures for internal use.

The examples below are the most common methods used for small dollar purchases:

- Vendor quotes (should contain vendor logo, contact information, item or service description, quoted prices, delivery terms, F.O.B. point, and date of quote)
- Written informal quotes (Fax, phone, or email quotes)
  - If seeking phone quotes, keep a record of:
    - Item or service description
    - Quoted prices
    - Delivery terms
    - F.O.B. point
    - Contact name
    - Date of quote
- Collaborative requisitioning in Ariba
- Request for Quote (RFQ)

For all small purchases, the purchaser should ensure delivery and freight is included in the total cost. Verbal quotes should be confirmed in writing. P-Cards may be used to pay for small purchases, in accordance with purchasing agency policies.

If the vendor's quoted price is not fair and reasonable based on the estimated cost, seek competition from at least one additional vendor. Extensive research is not necessary.

Orders should be placed through the eProcurement release of a purchase order to the vendor, unless otherwise exempted. Purchase order numbers are automatically assigned in the system.

#### 4.4.2 Informal Purchases

Where the cumulative value of a procurement, including all extensions and renewals, is valued between the small purchase benchmark of \$25,000 and an agency's general delegation, and the subject matter is not otherwise covered by an STC, the purchasing agency shall comply with the following procedures, unless otherwise exempted:

- Solicit competition, but sealed bidding is not required. This is often referred to as "three quotes and a buy."

- Issue solicitation documents to request or invite offers that include standard language, including the North Carolina General Terms and Conditions issued by P&C. The methods used for informal purchases include:
  - Collaborative Requisitioning
  - Informal Quote Request (IQR)
  - Request for Quote (RFQ)
- Handle all vendor negotiations, including those related to the contract terms and conditions.
  - Any modifications to the terms and conditions should be reviewed by agency counsel and may not conflict with P&C's North Carolina General Terms and Conditions.
- Review offers received and award contracts without P&C involvement.
- Hear bid protests or other vendor challenges to an award.

01 NCAC 05B .0301.

Additionally, RFPs or IFBs may be used for informal purchases. Agencies, community colleges, and universities may advertise these solicitations on the NC eProcurement system.

### 4.4.3 Formal Purchases

Where the cumulative value of a procurement, including all extensions and renewals, involves an expenditure of public funds exceeding an agency's general delegation or a university's bid value benchmark, and the subject matter is not otherwise covered by an STC, the purchasing agency shall comply with the following procedures, unless otherwise exempted:

- Competition shall be solicited utilizing sealed bidding.
- Standard solicitation documents that include standard language, including the North Carolina General Terms and Conditions issued by P&C shall be used.
  - Prior approval from P&C must be received for proposed changes to standard language. Any modifications shall not conflict with P&C's North Carolina General Terms and Conditions. All deviations must receive prior P&C approval.
- The purchasing agency shall prepare and advertise the procurement.
- P&C must review and approve all solicitations prior to posting.
- Solicitations shall be advertised in NC eProcurement for a minimum of 10 calendar days.
  - Agencies may also advertise solicitations on their websites or disseminate via email or other means, to further encourage competition.
- The purchasing agency will conduct the evaluation and send the award recommendation to P&C.

- P&C must review and approve the award prior to moving forward with the selected vendor.

01 NCAC 05B .0301.

#### **4.4.4 Email, Fax, or Telephone Bids**

When sealed bids are required, offers may not be sent by email, fax, or telephone. Sealed offers are required for the procurement of goods and services that exceed an agency's general delegation or a university's bid value benchmark. 01 NCAC 05B .0301.

### **4.5 Preparation of Solicitation Document**

The solicitation document is the key document in any procurement. It conveys critical information regarding the who, what, where, when, why, and how of a solicitation. The solicitation document must contain all of the information vendors need to accurately respond to the state's request in a timely manner.

At a minimum, the following information shall be included in the solicitation:

- Specifications, requirements, terms and conditions, and delivery information
- Agency name
- Buyer name
- Buyer contact information
- Solicitation identification number
- Title (a short description of the good or service)
- Opening date, time, and location (street address, office, room number)
- Additional information required by the solicitation

01 NCAC 05B .0314.

If the solicitation includes a conference or site visit for potential vendors to attend, this information shall also be furnished with the advertisement, to include:

- Mandatory or non-mandatory attendance
- Date, time, and location
- Contact persons and phone number
- Other requirements, such as number of attendees allowed, preregistration requirements, and virtual conference access information, if relevant

#### **4.5.1 References**

The state may require that vendors responding to a solicitation provide a list of past customers for which they provided similar goods or services as those sought in the solicitation. The state may contact these references to determine bid acceptability and may

consider this information in the evaluation. The solicitation document should indicate whether references will be considered in the evaluation.

## 4.6 Insurance Coverage

Providing and maintaining adequate insurance coverage is a material obligation of the vendor under the contract. Vendors shall be responsible for providing and maintaining commercial insurance, of the type and amount listed below. The default insurance coverage requirements vary based on contract value, as reflected below and in the North Carolina General Terms and Conditions.

The required coverage amounts listed below are minimums, which may be increased where there is a high risk of loss based on the subject matter of the contract. Any modification of the required insurance coverage should be based on a risk assessment and documented in the official procurement file. A risk assessment template is available from P&C for this purpose. The increased amounts should be provided in the solicitation document, so vendors are aware of the requirements. The insurance coverages provided for in the North Carolina General Terms and Conditions are not exhaustive, and other types of coverage may be needed for a specific procurement, such as cyber insurance or E&O coverage. The solicitation document should include any additional types of coverage required.

Buyers may request proof of insurance coverage from the vendor prior to contract award.

Minimum Coverage (\$)			
Contract Value	Worker's Compensation Employer's Liability	Commercial General Liability	Automobile Liability
Small Purchase	As required by North Carolina law	As required by North Carolina law	As required for risks involved in the procurement
More than Small Purchase, but less than \$1 million	\$250,000.00	\$500,000.00	<i>Bodily Injury and Property Damage</i> \$250,000
			<i>Un/Underinsured</i> \$250,000
			<i>Medical Payment</i> \$2,500
Greater than \$1 million	\$500,000.00	\$1 million	<i>Bodily Injury and Property Damage</i> \$500,000
			<i>Un/Underinsured</i> \$500,000
			<i>Medical Payment</i> \$5,000

## Section 5: Competitive Sealed Bidding

### 5.1 Overview of Competitive Sealed Bidding

Competitive sealed bidding is required where the total expenditure for goods and services exceeds an agency's general delegation. 01 NCAC 05B .0301. For all procurements that exceed an agency's general delegation, sealed offers are solicited by the using agency. P&C must review and approve the solicitation prior to posting and prior to award.

### 5.2 Advertising Solicitations

Agencies shall advertise formal solicitations that exceed their general delegation via the NC eProcurement system. When advertisement is required, agencies shall advertise the solicitation for a minimum of ten calendar days prior to the designated bid opening date. 01 NCAC 05B .0316. This rule does not prevent the supplemental solicitation of offers by other means, including direct mailings, phone calls, or agency advertisement, to encourage competition.

### 5.3 Solicitation Addenda

Addenda should be issued when it is necessary to make changes to the solicitation that will be applicable to all bidders, such as extending the bid opening or modifying bid submission requirements. Addenda shall also be prepared as necessary to respond to questions received from potential vendors during the question-and-answer period. The details about the question-and-answer period should be provided in the solicitation document. There are two types of addenda that can be issued:

- **Mandatory** - Mandatory addenda must be signed and returned with the vendor's bid submission in order for the vendor to be considered responsive and further eligible for award.
- **Non-mandatory** - Non-mandatory addenda do not need to be returned by the vendor and do not affect vendor responsiveness.

The addenda shall indicate whether it is mandatory and must be executed and submitted with the vendor's response to the solicitation. Any addenda issued shall be posted in the NC eProcurement system using the same procedures as the original solicitation posting.

### 5.4 Bid Opening

Bids and proposals shall be opened publicly at the location, date, and time listed in the solicitation document. Only those responses that are received by the deadline shall be opened and may be further considered for award.

At the time of bid opening, bidder names, manufacturer information, model numbers of offered items, delivery timeframes, and pricing that is not subject to negotiation or two-step opening shall be announced to vendors and other persons attending the opening. This includes all timely bids received, including those that may later be deemed non-responsive.

Late bids are not opened. If negotiation is anticipated, pricing may not be made public until award. 01 NCAC 05B .0503.

## 5.4.1 Bid Opening Procedures

It is important to record the bid opening results to be transparent about the process. Where sealed bidding is required, the following process should be followed:

- 1) Bids shall be received prior to the bid opening date and time specified in the solicitation. Late bids shall not be opened or considered.
- 2) At least two purchasing agency employees shall attend the bid opening to satisfy the witness requirement. 01 NCAC 05B .0305(a).
- 3) Bid openings shall occur at the location, date, and time specified in the solicitation.
- 4) All vendors in attendance shall sign the attendance sheet, indicating which party or parties they represent.
  - a) If a bid opening is held virtually, use a screenshot or other method to capture a list of attendees.
- 5) Ensure vendors understand that they shall not contact anyone other than the listed contact on the solicitation during the evaluation period.
- 6) Explain to attendees the evaluation process and that the only information that will be shared publicly at this time is:
  - Bidder names
  - Manufacturer/Make
  - Model number
  - Delivery timeframe
  - Pricing (unless negotiation is anticipated)
- 7) Agencies shall not comment about addenda received or not received unless the pricing, make, model, or delivery has been changed through an addendum.
- 8) Ensure vendors know how to access bid tabulations in the Interactive Purchasing System (IPS).
- 9) A tabulation of vendors responding to the solicitation shall be prepared.
- 10) Tabulations should be posted in the IPS as soon as practical. Do not post pricing until after award if negotiating.

### 5.4.1.1 One-Step or Two-Step Opening

Bid openings may be conducted as either a one-step or two-step process. The process required depends on the type of solicitation document used and the method of evaluation. The evaluation criteria and bid opening method must be included in the solicitation document.

- **One-Step (IFBs or RFPs):** The vendor submits one sealed package. At the date and time specified in the solicitation, bids from each responding vendor will be opened

publicly, and the name of the vendor and costs offered will be announced. If negotiation is anticipated, pricing may not be made public until award.  
01 NCAC 05B .0503

- **Two-Step (RFPs):** The vendor submits two sealed packages containing (1) the technical proposal and (2) the cost proposal. At the date and time specified in the solicitation, technical proposals from each responding vendor will be publicly opened and the name of each vendor announced publicly. A notation will also be made indicating whether a separate sealed cost proposal has been received. Cost proposals will be placed in safekeeping until publicly opened at a later date. Vendors shall be given at least two working days advanced notice of the date and time for the public opening of cost proposals.

### 5.4.2 Withdrawn, Void, or Recalled Offers

A “withdrawn bid” is a bid that is rescinded by the vendor prior to the bid opening. 01 NCAC 05A .0112(46). Vendors, or their authorized agents, may withdraw offers in writing. Withdrawn offers should remain unopened in the bid file along with the withdrawal letter. Purchasers do not need to notify the SPO of withdrawal requests made prior to bid opening.

A “voided bid” is an electronic bid that was submitted by a vendor in connection with an electronic solicitation that has been cancelled, leaving the bids voided and not opened electronically. 01 NCAC 05A. 0112(44).

A “recalled bid” is a bid that is rescinded by the vendor after the bid opening but prior to a contract being awarded. Recalls should be requested in writing after bids are opened. When a vendor seeks to recall its bid, purchasers shall:

- Review the reasons given for any recall request to ensure that allowing the recall would not compromise the procurement process
- Inform the SPO of the reason for the request and whether it was allowed

### 5.4.3 Late Offers

Bidders are solely responsible for having their offer delivered at the correct date, time, and location, regardless of delivery method. Late offers or modifications shall not be accepted unless the agency personnel involved in the solicitation are directly responsible for the delay.

### 5.4.4 Bid Tabulation

Once the bid opening has occurred the purchaser must create a tabulation of the publicly available information and post it in the IPS. Tabulations are normally available in the IPS within one working day after opening. 01 NCAC 05B .0305

**NOTE:**

- Lengthy tabulations may not be available in the IPS.
- Requests for tabulations or tabulation information (such as pricing) that is not publicly available cannot be honored until after award.

## 5.5 Legal Review Thresholds

To ensure that contracts are legally sound and to protect the state from unnecessary risk, legal review of solicitations may be required. State law provides for legal review under certain circumstances. In addition to changes in standard terms and conditions or other triggers that may be addressed in this manual, legal review is required for:

- Contracts exceeding \$1 million
- Non-competed contracts exceeding \$5 million

Legal counsel should be included in the solicitation as early as practical. P&C will not approve award recommendations until any required legal review is complete.

The State Purchasing Officer interprets contract value to include all potential extensions and renewals. Thus, the value of the contract is the cumulative total amount for which an agency is seeking approval to spend under the contract.

### 5.5.1 Contracts Exceeding \$1 Million

All contracts that cumulatively are expected to exceed \$1 million shall be reviewed by the Contract Management Section (CMS) before P&C will approve the award recommendation. Statewide Term Contracts (STCs) exceeding \$1 million awarded by P&C also must be reviewed. There are no exceptions to this requirement. G.S. 143-50.1.

Some entities are exempt from CMS review. Most notably, university general counsel shall review contracts that exceed \$1 million. G.S. 114-8.3(b). Entities claiming an exemption from CMS review shall provide a citation that supports the exemption.

Pursuant to G.S. 114-8.3(c), all state entities and universities are required to report to P&C when they intend to enter into a contract expected to exceed \$1 million for record keeping purposes, regardless of whether they are exempt from CMS or P&C review. P&C has developed an e-form for this purpose. Contracts that are processed through P&C's electronic bid system do not have to be separately reported through the e-form.

### 5.5.2 Non-Competed Contracts Exceeding \$5 Million

Proposed non-competed contracts for goods or services estimated to exceed \$5 million shall be reviewed by the Attorney General (AG) or their designee prior to contract award.

The AG's checklist and certification shall be completed before final contract approval. G.S. 143-49(3a).

**NOTE:** Agencies shall seek approval for total contract value.

## Section 6: Evaluations and Negotiations

The evaluation method and criteria are critical to the procurement process. They should be tailored to each specific procurement and be included in the solicitation document. The evaluation method and criteria dictate how vendor responses to a solicitation will be evaluated and a vendor selected for award. When developing the evaluation sections of a

solicitation, consider how the responses will be assessed in a fair and consistent manner and ensure that the resulting contract will be in the best interest of the state.

Only offers deemed responsive after the completed administrative review can be considered for evaluation and award. Prior to evaluations, it is essential to ensure that both the offer and the vendor are eligible for award. This involves assessment of whether the offer is responsive, and not debarred, prior to evaluation. After vendor selection, in certain circumstances, negotiation may be needed to secure better pricing or finalize the terms and conditions of the contract.

## **6.1 Determining Responsiveness**

Before the evaluation can proceed, each offer received must be reviewed to determine whether it is responsive before it can be further considered for award.

01 NCAC 05A. 0112(28). A "responsive" offer is an offer that meets all of the requirements of bid submission, such as bid execution, submittal of all required information and completed attachments, and receipt by the bid submission deadline.

Bids with material deficiencies are non-responsive and cannot be considered for award. For example, failure to submit pricing or a technical approach is a material deficiency, since the response cannot be properly evaluated. Submission of a response with material deficiencies cannot be cured by clarification. 01 NCAC 05A .0112(6), 05B .0307, 05B .0309(c). An issue with a response that does not create a material issue, such as a vendor providing two copies of its bid instead of three, can be waived as a minor informality or technicality. In certain instances where all responsive vendors have made the same material mistake, that requirement may be waived for all vendors.

Examples of omissions that would result in a vendor being deemed non-responsive:

- Failure to provide required references
- Failure to sign the bid or proposal
- Failure to complete all required attachments
- Failure to return all mandatory addenda
- Failure to submit pricing
- Failure to attend a mandatory site visit or conference
- Failure to meet delivery requirements
- Late bid submission

Non-responsive vendors may not be evaluated or considered for award, so responsiveness must be determined prior to evaluation.

### **6.1.1 Signed Bid**

All received bids must be signed (executed) by the vendor to be accepted for consideration. A signature indicating that the document is the vendor's offer is necessary to create a binding contract.

In certain instances, a vendor will include a signed cover letter that reflects that the vendor intends to be bound by the terms of the solicitation document. Depending on the specific language of the cover page, the signed cover page may be able to replace the signed solicitation execution page. Specific cover letter language is required for this substitution. Consult legal counsel to determine whether a signed cover page can stand in lieu of the signed solicitation document.

## **6.2 Determining Responsibility**

In addition to submitting a responsive offer, a vendor must be responsible to be eligible for award. A "responsible" vendor is one who is able to satisfactorily perform the work. A contract may not be awarded to a vendor if that vendor is not responsible.

A vendor is determined to be responsible by reviewing the information they provided in response to the solicitation to see if they have the capacity to perform the technical and contractual requirements of the contract. For example, the certification of financial condition or other financial documents may demonstrate a vendor's responsibility.

## **6.3 Debarred Vendors**

Debarred vendors are not entitled to enter into contracts with the state. 01 NCAC 05B .1520. It is critical to check whether a potential vendor is listed on the state's debarred vendor list before they are selected for award. If a solicitation is funded by federal grants, consulting the federal debarred vendor list may also be required.

## **6.4 Confidentiality During Evaluation**

During the period of evaluation and prior to award, only the information provided in the posted bid tabulation is public record. If negotiation is anticipated, pricing does not need to be posted in the bid tabulation and may not be available until after award.

Access to information about specific offers, including any accompanying information submitted with the offers, shall be limited to persons in the agency who are responsible for handling the bid evaluation and contract award. Vendor participation in the evaluation process shall not be permitted. Issuing agencies should limit vendor communications to those necessary to clarify offers or engage in negotiations.

After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of confidential information.

## **6.5 Evaluation Methods and Criteria**

Responsive vendors shall be evaluated to determine and document which offer is the most advantageous to the state based on the evaluation method and criteria in the solicitation document. The evaluation criteria define the selection process and how offers will be evaluated and awarded. When appropriate, they also provide for value analysis in selecting the most advantageous proposal by considering other factors besides price, such as

performance history, experience, technical approach, and other related factors. Contracts are awarded based on what is most advantageous to the state.

Evaluations may be based on either cost, numerical weighting, or narrative trade-off. Whichever approach is used, the evaluation must be thoroughly documented and included in the official file. All responsive offers shall be considered for award.

All evaluation factors and criteria and their relative importance must be stated clearly in the solicitation document. Unless the solicitation provides otherwise, the relative importance is determined by the order in which the factors are listed. Specific percentages for the weight of each factor are not required, but if used, must be disclosed in the solicitation document. Relative strengths, deficiencies, weaknesses, and risks supporting the evaluation must be documented for each vendor and saved in the procurement file. The evaluation team shall determine the final ranking of all offers under consideration using only the criteria set forth in the solicitation document. All vendors are ranked from most advantageous to least advantageous to the state. Only criteria listed in the solicitation shall be considered in the evaluation and cannot change during the evaluation phase.

The following evaluation methods may be used when appropriate:

- **Lowest Price Technically Acceptable**
  - Typically used with an IFB
  - Awards shall be made to the responsive and responsible vendor with the lowest price whose bid meets the specifications of the solicitation.
- **Best Value**
  - Typically used with an RFP
  - Specific criteria define how offers are evaluated and awarded.
  - Provide value analysis for selecting the most advantageous proposal factors beyond price. Stated criteria may include past performance, qualifications, experience, staffing plans, proposed technical approach, and other related factors.

### **6.5.1 Lowest Price Technically Acceptable**

If the lowest price method is used, award must be made to the responsive and responsible vendor with the lowest price, if the bid meets the specifications of the solicitation (i.e., is technically acceptable). Trade-offs between price and performance are not allowed. Clarifications and vendor negotiations may be used with this method of award.

### **6.5.2 Best Value**

The intent of Best Value procurement is to enable vendors to offer, and the agency to select, the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of the procurement rather than price.

Best Value evaluations are governed by G.S. 143-52(a) and 143-135.9.

The following information describes the Best Value procurement methodology:

- 1) A committee evaluates offers in accordance with the stated evaluation factors to determine which proposal offers the best trade-off between price and performance.
- 2) Specific evaluation criteria are provided in the solicitation document. The evaluation may only consider those factors and the statutory factors in the evaluation for award.
- 3) For solicitations that use Best Value evaluation, vendor scoring and ranking must be determined by using consistent rating methodologies, such as narrative, qualitative, quantitative, or numerical rankings.
- 4) The evaluation team must identify the strengths, deficiencies, weaknesses, and risks supporting the evaluation and document them in the procurement file.
- 5) Evaluation committees shall use only solicitation criteria to determine final ranks of offers, from most advantageous to least advantageous to the state. Narrative evaluations assess the strengths of an offer, and how they support the business objective, and the weaknesses and/or risks, and how they may implicate the business objective. The resulting justification of which offer is most advantageous to the state shall be done by consensus of the committee.

### **6.5.2.1 Example Evaluation Criteria**

Selection of appropriate evaluation criteria is a critical component of the solicitation document. It defines the selection process and guides how offers will be evaluated and awarded. It also provides for value analysis in selecting the most advantageous proposal by considering other factors besides price, such as past performance history, qualifications, experience, and technical approach used in the proposal.

Common evaluation criteria include:

- Cost
- Delivery and implementation schedules
- Conformity with the specifications
- Vendor experience
- Technical approach
- Staffing plan

If financial information will be evaluated, the solicitation document must state the requirement and inform the vendor of what documentation must be submitted. The vendor's financial information, statements, and/or documents submitted with its response shall be evaluated to determine whether the vendor:

- 1) Has sufficient ability to perform the contract
- 2) Is able to meet its short-term obligations, debts, liabilities, payroll, and expenses
- 3) Has provided complete, reliable, and accurate financial information regarding its business operation

- 4) Is financially solvent
- 5) Has sufficient cash flow and/or available financing from a financial institution to perform the proposed contract for an extended period without receiving payment from the state

Clarifications or negotiations may be conducted with the vendor after receipt of offers as appropriate. In those cases where negotiation is required, Best and Final Offers (BAFOs) may be needed to memorialize negotiated changes to the initial offer.

### **6.5.2.2 Narrative Evaluation**

A narrative process of evaluation implementing the factors in G.S. 143-52 and the incorporated Best Value statute (G.S. 143-135.9) lists the evaluation criteria from the solicitation and the strengths and weaknesses of a vendor's proposal relative to those factors and the specifications of the solicitation, while giving priority to those factors weighted more highly. The evaluation should discuss each vendor's strengths or weaknesses relative to the evaluation criteria. The evaluation should never include any opinions or feelings.

Extensively listing strengths and weaknesses of vendors in a table and then concluding without discussion that a particular vendor should receive the award is subject to protest. As such, the use of the narrative evaluation requires a written explanation of the strengths and weaknesses of each proposal and a subsequent justification of why the recommended awardee provides the Best Value to the state. Many narrative evaluations fail to connect the dots and explain the conclusion reached after evaluation of the award criteria.

If using a narrative evaluation process, the evaluation committee should come to decision by consensus and be clear in its written evaluation about the basis for its evaluation and decision. Arguably, a clear and well-written narrative evaluation that has a rational basis should have an advantage over a numerical evaluation in any legal challenge to the award.

### **6.5.2.3 Numerical Evaluation**

A numerical evaluation shall be based on measurable and objective criteria. The weight value and scoring methodology must be spelled out in the solicitation document. The results of the evaluation shall be in writing and preserved as a public record after award, which shall include individual scores from each evaluation team member or consensus scores agreed to by the team as a whole. Cost should be weighted and scored, as well as technical approach, qualifications, resources, experience, and any other criteria identified. Vendors are ranked from most advantageous to least advantageous to the state.

Evaluations shall be based on measurable and objective criteria. The solicitation document shall clearly identify weight value and scoring methodology, though these values may vary between solicitations. Scoring values are not standardized and can be developed as needed to maintain well-defined, fair, and equally measured evaluation criteria. An evaluation scoring example is below.

Offers are ranked using the evaluation factors and their relative importance or weight as defined in the solicitation document. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors.

For example, an offer with the lowest price would normally receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced. Clarifications and negotiations are allowed, as needed.

### Example of a Numerical Evaluation

Evaluation Factors		Maximum Possible Score
Cost		40
Technical	Corporate Background & Experience	40
	Technical Approach	20
<b>Cost Proposal Points</b>		<b>40</b>
<b>Maximum Technical Proposal Points</b>		<b>60</b>
<b>Maximum Cost + Technical Proposal Score</b>		<b>100</b>

The cost evaluation is calculated based on the lowest cost receiving the maximum points. The next ranking vendor(s) will receive a percentage of the maximum points, based on the formula:

$$\text{vendor lowest cost} / \text{vendor cost}$$

Weighted evaluations can be scored and derived either by consensus or individually. Differences between consensus and individual evaluations are described below. Weighted evaluations should be supported with an explanation of the point distribution.

Consensus (Recommended method)	Individual
<ul style="list-style-type: none"> <li>• Evaluators reach one score collaboratively.               <ul style="list-style-type: none"> <li>○ Eliminates scoring discrepancies</li> <li>○ Reduces protests</li> </ul> </li> <li>• Average does not equal consensus.</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluators reach scores independently and then average.               <ul style="list-style-type: none"> <li>○ Increases potential for scoring discrepancies</li> <li>○ Makes scheduling more convenient</li> </ul> </li> </ul>

## 6.6 Two-Step Competitive Sealed Bidding

Two-step competitive sealed bidding separates the technical evaluation from the cost evaluation. Under a two-step process, technical and cost proposals are submitted separately, although both must be received by the bid deadline. Solicitations must give notice that each component of the response must be distinct and must not include information relevant to the other:

- The technical proposal shall not contain cost information.

- The cost proposal shall not contain technical information.

Each proposal shall be dated and signed by an authorized official. Unsigned proposals may be rejected.

### **Step 1**

Technical proposals are opened and evaluated first. Cost proposals are held in safekeeping but are not opened and do not become public record until the technical offers have been evaluated.

### **Step 2**

If a vendor's technical proposal was accepted, their cost proposal may be opened. Vendor names and prices are then tabulated.

Agencies shall notify bidders at least two working days prior to the cost opening. Technical and cost proposals shall be opened publicly with accepted bidders at the date, time, and location specified in the solicitation.

## **6.7 Posting Bid Tabulations**

A bid tabulation should be posted in the Interactive Purchasing System (IPS) within one business day of the bid opening. The tabulation should list, at a minimum, the names of the vendors that submitted a response. The tabulation should also include the make and model of the item offered and the delivery time where appropriate. If negotiation is anticipated, the pricing is not included as part of preliminary tabulation but is included in the final tabulation once an award is made.

Non-NC eProcurement users' tabulations cannot be posted in the IPS without inserting a dollar amount. For the preliminary tabulation or for a two-step RFP, one dollar should be listed as a placeholder.

If the "amounts bid" is not adaptable to being summarized, or if a summary would be misleading, a manual tabulation shall be prepared upon request and indicated in the comment section of the IPS tabulation.

## **6.8 Communications with Vendors**

During evaluation, communications with vendors should be limited. Agencies may clarify offers or negotiate with vendors after offers are received. BAFOs shall be signed to document the contract changes resulting from negotiations.

Evaluators may request oral presentations or discussion with vendors to clarify the offers received.

## **6.9 Tie Bids**

When the evaluation of two or more competitive solicitation responses results in a tie, the awarded vendor shall be selected by coin toss. Coin tosses shall be witnessed and

documented in the procurement file by managers or other high-ranking agency administrators.

## 6.10 Basis for Rejecting Offers

Vendor offers may be rejected in part or whole. Bases for rejection may include:

- When the offer does not meet the specifications in the solicitation regarding quantity, quality, delivery, price, or service
- When the offer does not comply with the requirements set forth in the solicitation document
- When the purchasing agency determines there is a lack of competition
- When the solicitation contains errors
- Cancellation or changes in the intended project or other determination that the proposed requirement is no longer needed
- Dual or similar offers which prevent a Best Value procurement to be determined
- Limitation or lack of available funds
- Any determination that rejecting offers is in the best interest of the state

01 NCAC 05B .0501.

## 6.11 Negotiation

Negotiations between the state and potential vendors aim to achieve mutually satisfactory objectives and benefits and to reconcile differences on pricing and contract terms and conditions. 01 NACA 05B .0112. Negotiations are conducted with vendors to allow for modifications to the terms and conditions, the pricing, or both.

Agencies may negotiate with one or more responsive vendors or reject all offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement. Negotiations may also be conducted with suppliers who merit a waiver of competition. 01 NCAC 05B .0503.

Negotiations shall be conducted by the agency if the procurement is valued less than its general delegation. Appropriate assistance may be sought from agency or P&C legal resources, depending on contract value and any relevant general delegation, special delegation, or exemption. Additional terms and conditions may be needed for specific procurements and should be part of negotiations as needed.

Offers and counteroffers may be made as necessary with each vendor to secure mutually agreeable contracts. After negotiations, the state will select the vendor(s) with the most advantageous proposal. Vendors shall submit written confirmation of modifications and final terms and conditions of the proposal. BAFO documents shall be used to document changes made through negotiation unless, for instance, a revised RFQ is issued after negotiation.

## 6.12 Negotiation Tips and Guidelines

Successful negotiation is based on knowing the objective of the negotiation and deciding on the tactics to use in achieving that objective.

Negotiation plans for internal reference should be made beforehand and should guide the process to the desired outcome. These typically include:

- What are the issues to be negotiated?
- What terms or modifications is the state not able to accept?
- What specific outcome is desired on each issue?
- What is the least acceptable outcome?
- What issues are deal-breakers if negotiations are not successful?
- Why is the state seeking the change?
  - This should persuade vendors to agree but does not necessarily disclose all aspects of the state’s situation, motivation, or needs.

Do	Do Not
<ul style="list-style-type: none"> <li>• Avoid arguments and interruptions</li> <li>• Be ethical, fair, and firm</li> <li>• Be well-prepared</li> <li>• Be open to discuss alternatives</li> <li>• Attempt to reach a “win-win” result</li> </ul>	<ul style="list-style-type: none"> <li>• Discuss other proposals</li> <li>• Be unreasonable or unfair</li> <li>• Negotiate beyond the scope of vendor’s proposal</li> </ul>

## 6.13 Award Recommendation

Once evaluations and negotiations have been completed with one or more selected vendors, the agency must prepare a written narrative summarizing the rationale for the selected offer as well as the reasons for non-selection of offers. 01 NCAC 05B .0309.

The summary shall address the merits of the offer relative to the solicitation document and shall address positive or negative attributes as well as weak or non-supportive factors. When numerical points and/or percentages are used in the solicitation document, numerical and/or percentage criteria must be used in the evaluation exactly as noted in the solicitation document. Often each criterion is weighted, giving certain areas of the criteria more value relative to the award determination. Be sure that the final scores correctly reflect that weighting.

## 6.14 Partial and Multiple Awards

Unless otherwise stated in the solicitation, partial, progressive, or multiple awards may be made:

- Due to insufficient funds
- As a result of legislative mandates
- Where it is advantageous to award separately by items
- Where more than one vendor is needed to provide the contemplated requirements as to:
  - Quantity
  - Quality
  - Delivery
  - Services
  - Geographical areas

Some term contracts require making an award to more than one vendor. This shall be limited to the number of vendors needed to reasonably satisfy the contract requirements. Care should be exercised to protect the character and principles of competition. GS 143-52.3.

## 6.15 Notification of Award

Awarded vendors shall be notified of contract award. If the solicitation was advertised on P&C's electronic bid system, an award notice shall be posted there as well.

Posted award notices shall identify the contract and award information, awarded vendors, and pricing. Award notifications shall be posted to the electronic bid system within three calendar days of award or within one day after execution of the contract, whichever is later.

## Section 7: Post-Award

### 7.1 Notices to Vendor

Once bid evaluations are complete and a vendor has been selected, the issuing agency should notify the selected vendor(s) of contract award. This notification should be provided prior to issuance of a purchase order. For competitive sealed bidding, award information shall be posted publicly to the NC eProcurement System.

### 7.2 Release of Confidential Information After Award

All information and documentation relative to the development of a solicitation document for a proposed procurement or contract shall be deemed confidential in nature, except as deemed necessary by the purchaser to develop a complete contractual document. Such

material shall remain confidential until the award of a contract or until the need for the procurement no longer exists.

This confidentiality requirement includes all information and documentation relative to the development of a specification until the adoption of that specification or award of a contract, whichever is later.

After contracts are awarded, or when there is no longer a need for the good or service, complete files shall become public record and made available to interested parties, with the exception of trade secrets or other information a vendor appropriately deemed confidential in its response. 01 NCAC 05B .0103, G.S. 132-1.2.

As a condition to confidential treatment, each page of the vendor's response containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a vendor may label as a trade secret, the determination of whether certain information is or is not entitled to protection is determined in accordance with G.S. 132-1.2.

Confidential information must be redacted if documents are produced in response to a public records request.

## **7.3 Review of Services for Acceptance**

Agencies shall ensure that services comply with applicable codes, statutes, local ordinances, policies, and safety requirements. Agencies shall compare actual performance against performance measures, goals, deliverables, and objectives to determine whether all required work has been completed. Performance should be considered complete when the services are approved as acceptable by the agency Contract Manager or Project Manager unless otherwise stated in the contract.

## **7.4 Review of Goods for Acceptance**

Receiving is the act of taking possession and inspecting goods for acceptance based on the specifications of the solicitation document. When goods are received from a vendor it is important that they are reviewed to ensure compliance with the contract and the purchase order and to confirm that the goods are not damaged. Goods shall be inspected at the time of receipt and compared against the packing slip, if possible. Prompt acceptance of goods received is important to prevent any vendor claims that goods were "deemed accepted" by the state without actual inspection and acceptance by the agency.

F.O.B. destination should be required in the solicitation document, so the risk of loss or damage to the goods will not pass to the state until delivery.

If all the specifications of the order are met and no damages are found, the item is received. All packing slips and any necessary paperwork should then be submitted to the proper agency division so the invoice can be paid.

When damages or discrepancies are discovered, the vendor is to be immediately notified with specific information of the discrepancy. Damage should be documented by a dated photograph. Partial shipments shall be documented and raised with the vendor immediately upon discovery.

### **7.4.1 Inspection and Testing**

Agencies should inspect and test goods promptly upon receipt consistent with the following:

- Agencies shall inspect goods upon delivery to ensure compliance with contract requirements and specifications.
- Agencies may authorize revisions and cost adjustments as needed after inspections are completed to account for discrepancies in quantity, quality, or deviations from the specifications. If an increase in cost results in the total contract value exceeding the agency's delegation, then prior approval from P&C is required.
- Agencies shall ensure that goods comply with applicable codes, statutes, local ordinances, policies, and safety requirements.
- Agencies shall contact vendors about delivered products that fail to meet contract specifications or requirements and document these communications in the procurement file.

### **7.4.2 Damaged Goods**

Agency processes may be delayed if damaged goods are received. Sometimes damages are not discovered until packaging is opened, items are installed, or equipment is put into service. Vendors shall be notified as soon as damage is discovered and potential impacts on the agency are documented.

Purchasing agents should determine where a subsequent damage claim is to be filed based on the terms specified in the contract or purchase order. Vendors should be notified of any potential impacts the agency may incur due to the damaged goods.

### **7.4.3 Inaccurate Orders**

When a discrepancy in part number(s) and/or products occurs, vendors may be placed in default if justified by the contract terms. Vendors should be notified immediately of order discrepancies, so they are afforded the ability to timely resolve these issues.

Inaccurate orders often create inaccurate invoices that compound the problem and ultimately require a meeting between the purchasing agent and the vendor to discuss vendor performance. Purchasing agents may counsel vendors with multiple order discrepancies on how the vendor plans to improve its performance so they may be eligible for future contracts.

## 7.4.4 Inaccurate Quantities

Purchasing agents should resolve inaccurate quantities with vendors by either obtaining credit or replacement of goods that were shorted from shipment.

Receiving departments should notify purchasing agents of the nature and type of quantity discrepancies which may include:

- Too many/too few items
- Shipping the wrong part number or wrong manufacturer part
- Case quantities instead of the amount ordered, e.g., reams of paper versus cases of paper. Buyers should document this for future reference when ordering this same item.

## 7.4.5 Late Shipments

When shipments are late, purchasing agents should:

- Document late shipments
- Issue a Vendor Complaint Form, if necessary, so further action can be taken
- Determine if liquidated damages apply based on the language of the contract
- Discuss issues with vendors that have multiple late shipments to identify root causes of delays and determine how the vendor can correct the issue moving forward

## 7.5 Contract Closeout Checklist

It is the responsibility of each Agency Contract Administrator to ensure that the work under the contract has been completed prior to final payment. Once that has been determined, agencies should perform contract closeout processes. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. In addition, contract closeout is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

The contract closeout file should contain all necessary documentation relative to the agreement at the time of closeout. Contracts with active warranties shall not be closed out or receive final contract performance reviews until the warranty expires. With the exception of ongoing warranties, final payment should never be made until all work is complete and all deliverables are received and accepted.

A contract is ready for closeout when:

- 1) All goods and services have been received, completed, and accepted by the agency.
- 2) All deliverables, including reports, have been delivered and accepted by the agency. Contract administrators should compare actual performance against performance measures, goals, and objectives to determine whether all required work has been completed.
- 3) All monitoring issues have been resolved.

- 4) Vendor performance has been evaluated by comparing work completed against contract goals and objectives.
- 5) Final acceptance from the Project Manager has been received (if applicable).
- 6) Vendor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.
- 7) Any deficiencies found as part of the closeout process are documented, and resolved, if possible.
- 8) Final payment has been made.

In practice, many contracts cannot be closed out after the date the above items are all completed, because the warranty period is effective well beyond such date. Therefore, the contractor may not have "satisfactorily performed all required contractual obligations" until the end of the warranty period. Furthermore, sometimes even at that point the contract cannot be fully closed out because it may, for example, require the contractor to have repair parts available for years after contract award.

It is recommended that agencies have a closeout process for contracts that allow sufficient time to finalize closeout procedures including completion of all final obligations and issuance of payments. Good contract management and administrative procedures require that contracts be closed out and filed, not open or unresolved for an extended amount of time beyond the expiration date.

## 7.6 Performance and Default

When performance issues arise in a contract, they should be resolved at the lowest possible level to have the performance remedied quickly and satisfactorily. If one or more material issues are not resolved, the contracting agency may find a vendor in default of contract for failing to perform in accordance with the contract requirements and terms and conditions. The state has several documents frequently used to document performance issues and exercise contract default clauses:

- **Requests to Cure** are utilized to issue a formal complaint regarding the performance of a vendor, to document vendor performance failures, and to obtain a response from the vendor on how they will prevent the issue from reoccurring.
- **Notice of Default** and **Request to Cure** letters are utilized to provide formal notice to a vendor that they are in default of a provision in a contract and require the vendor to cure that default within a specified timeframe or their contract will be terminated for cause.
- **Notice of Termination and Remedies** letters are utilized to provide formal notice to a vendor that they are being held in default under the contract and that the contract is being terminated. The letter may also advise the vendor of the remedy being sought, such as the additional cost of obtaining substitute goods or services.

For goods purchases, agencies may immediately purchase replacement goods on the open market and charge those expenses to vendors who are found in default for failing to perform in accordance with the contract's terms. G.S. 25-2-712.

## 7.7 Debarred Vendors

Debarment means a vendor shall not be entitled to enter into a contract for goods or services, shall be placed on a debarred vendor list, and shall be removed from any distribution lists which may be utilized by P&C. 01 NCAC 05B .1520.

Vendors may only be debarred in limited circumstances, such as:

- 9) Pursuant to G.S. 143-59.2, if the vendor or any officer, director, or owner is convicted of any violation under G.S. 78A, the Securities Act of 1933 or the Securities Exchange Act of 1934
- 10) By the SPO upon finding of fraud, misrepresentation, or other deceptive acts or practices while doing business with a state agency, found during an audit by the state auditor in accordance with G.S. 147- 64.6(c)(21) or found after an internal audit by an internal auditor in accordance with G.S. 143-746(f).
  - a) After a finding by the state auditor or internal auditor, the SPO's determination to debar a vendor shall be based on the following factors:
    - i. The severity of the conduct identified in the findings and any recommended actions by the state auditor or internal auditor
    - ii. The vendor's history of performance on one or more contracts
- 11) For failure to pay required eProcurement fees

## 7.8 Contract Renewals and Extensions

Contracts may need to continue after the expiration of the initial contract term. Contract renewals and extensions allow for contract performance to continue under the same terms and conditions as the original contract period.

The agency must consider and document the factors provided in 01 NCAC 05B .0321 prior to exercising a renewal or seeking a contract extension.

### 7.8.1 Contract Renewals

Contract renewals are provided for in the solicitation document. They may be exercised by the state as a matter of right and do not require the vendor to execute an additional contract document or otherwise agree to the extended contract term. 01 NCAC 05A .0112. A notification should be sent to the vendor informing them that the state has chosen to exercise a renewal option from the contract.

### 7.8.2 Contract Extensions

Contract extensions are another mechanism for extending the life of a contract. Unlike renewals, contract extensions are not provided for in the original contract document. Both the state and the vendor must agree to a contract extension, and a contract extension document must be drafted and executed by both parties. 01 NCAC 05A .0112.

SPO approval must be received for a contract term that exceeds three years. This approval must be received before an agency can enter into a contract extension. SPO approval for an extended contract term is required regardless of contract value. 01 NCAC 05B .0319.

After the contract extension has been executed by the state and the vendor, the agency must post a public notification of the extension to P&C's electronic bid system. The requirements of the posting are provided in 01 NCAC 05B .0320.

## **Section 8: Procedures and Records**

### **8.1 Procurement File Maintenance**

A procurement file should be created for each procurement. 01 NCAC 05B .1903. Each file should contain all documents related to the procurement, including as applicable:

- Original offers if in writing, or written documentation of verbal offers received
- A written, dated, and signed justification for award or cancellation
- Worksheets and evaluations
- A written, dated, and signed justification for waiver or emergency purchase
- Tabulation of offers received
- Copies of purchase orders
- Related correspondence
- Reasons for receiving only one offer in response to a solicitation
- Negotiated contracts
- Reasons for not accepting technical proposals
- Copies of any inspection reports (if applicable)
- Copies of requisitions, purchase orders, terms and conditions, and freight bills

Procurement files shall be retained in accordance with agency records-retention schedules. Procurement files should be maintained with a naming convention that allows for files to be easily identified and organized.

### **8.2 Public Records and Confidentiality**

Solicitation information and documentation shall be confidential until a contract is awarded, except where deemed necessary by the purchaser to develop a complete contractual document. 01 NCAC 05B .0103. During evaluations, only tabulation information shall be public record. Pricing may be withheld from the tabulation where negotiation is anticipated.

After contracts are awarded, but before they become public, the purchasing agent shall review and redact information marked confidential by the vendor. Pricing shall not be confidential.

## 8.3 Public Records Requests

The public may request to see an awarded or canceled procurement. This is formally called a public records request.

Public records are defined as all documents or materials made or received pursuant to law (or ordinance where municipalities are concerned) in connection with the transaction of public business by agencies of North Carolina government or its subdivisions. "Agency of North Carolina government or its subdivisions" shall mean and include every public office, public officer or official (state or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the state or of any county, unit, special district, or other political subdivision of government. G.S. 132-1.

The public records and public information compiled by the North Carolina government, or its subdivisions, are the property of the people. Therefore, it is the policy of this state that the people may obtain copies of their public records and public information free or at minimal cost. "Minimal cost" means the actual cost of reproducing the public record or public information.

Public records requests should be referred to an agency's Public Information Officer for assistance.

Public Record Categories	
<ul style="list-style-type: none"><li>• Documents</li><li>• Emails</li><li>• Papers</li><li>• Letters</li><li>• Maps</li><li>• Films</li><li>• Artifacts</li><li>• Books</li></ul>	<ul style="list-style-type: none"><li>• Photographs</li><li>• Sound Recordings</li><li>• Magnetic or other tapes</li><li>• Electronic data processing records</li><li>• Materials made or received pursuant to law or ordinance in connection with the government or its subdivisions</li></ul>

Agencies are required to make procurement files available as a public record. The following procedures are applicable when making files available to the public:

- 1) The public should submit a formal request for the desired documents.
- 2) Legally required redactions, including removal of information appropriately marked confidential shall be completed prior to public viewing.
  - a) Pricing or total award costs are always public record and shall not be marked confidential.
- 3) A minimal cost should be charged for use of the state's paper, toner and equipment. This charge cannot be more than the actual cost to copy the records. Normally, the charge cannot include employee time.
- 4) Agencies are not required to create or compile a record that does not exist. Agencies may voluntarily elect to create or compile a record and may negotiate a reasonable charge for the service. G.S. 132-6.2(e).

- 5) Canceled solicitations that are anticipated to be reissued in the near future shall remain confidential until after an award is made.
- 6) Dollar amounts awarded to specific vendors are available on P&C's electronic bid system and are public information.
- 7) Vendor complaint records are also public; requests for copies will be handled in the same way as copies from procurement files.

## 8.4 Redacted Information

Procurement files may need to be redacted to protect sensitive information before they are provided to the public. The public should not be permitted in file storage rooms or otherwise be allowed to view files without an agency representative present.

Personally identifiable information (PII) is the most common category of redacted information. G.S. 75-61 and G.S. 14-113.2(b) provide more information regarding PII. For procurement purposes, commonly redacted information includes:

- Social security numbers
- Federal taxpayer identification numbers (EIN)
- Bank account or credit card information
- Information marked "CONFIDENTIAL"
- Vendor-submitted financial documents

## 8.5 Record Retention

Except where state law provides to the contrary, procurement documents shall be maintained for five years after contract expiration dates, plus one additional year after the conclusion of any litigation, even if beyond the five-year period. Files shall be maintained individually for easy reference, whether maintained electronically or as hardcopy files. Agencies should retain contracts for the duration of any applicable warranty.

Agencies should consult the North Carolina Department of Natural and Cultural Resources, State Archive website for more information about records retention requirements, public records, and best practices.

## Section 9: Bid Protests

### 9.1 Bid Protests

A bid protest is a process by which a vendor wishing to protest an award by the state can present for consideration their request for relief. Bid protests are governed by 01 NCAC 05B .1519. A vendor initiates a bid protest by sending a written request to protest the award to the correct receiving entity, based on the contract amount. The protest letter must be received within thirty calendar days of the award, or the protest is untimely and will not be heard.

Per 01 NCAC 05B. 1519, "Vendors" are permitted to submit a bid protest. "Vendor" is defined as "a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual or other entity submitting a response to a Solicitation." 01 NCAC 05A .0112. Thus, a vendor must have submitted a response to the procurement at issue in order to submit a bid protest.

## 9.2 Bid Protest Procedures

To ensure fairness to all vendors and to promote open competition, agencies and P&C shall actively follow up and be consistent in responding to a vendor's protest concerning contract awards.

Protests of contracts that exceed an agency's delegation are heard by the SPO. Protests of contracts valued less than an agency's delegation are handled by the agency. 01 NCAC 05B .1519. Agencies should establish procedures to handle vendors' protests for contracts valued below their general delegation.

### 9.2.1 Protest Process Under Delegation

Protests for contracts valued under an agency's general delegation shall be heard by the agency. The below process shall be followed:

- 1) Vendor submits a written request for a protest meeting to the agency's executive officer or their designee within thirty calendar days from the date of award. The vendor's request shall contain the reasons why it has a concern with the award and any supporting documentation.
- 2) Within five calendar days from receipt of the protest letter, the executive officer shall submit a copy to the SPO.
- 3) **If a meeting is refused:** Within ten calendar days from the date of receipt, the executive officer shall notify the vendor in writing that its protest met one of the following conditions:
  - a) It was not timely.
  - b) It did not contain required information.
  - c) It was meritless, and a meeting would have served no purpose.

A copy of the executive officer's decision letter shall be forwarded to the SPO.

- 4) **If a meeting is granted:** The meeting must be scheduled within thirty calendar days from receipt of the protest, unless mutually agreed.
- 5) Within ten calendar days after the meeting, the executive officer shall notify the vendor of the results of the protest meeting and the appeal rights under Article 3 of G.S. 150B. A copy of the executive officer's decision letter shall be forwarded to the SPO.
- 6) If there is any further administrative or judicial review of the award, the purchasing agency shall notify the SPO in writing.

## 9.2.2 Protest Over Delegation

Protests for contracts that exceed an agency's general delegation shall be heard by the SPO. The below process shall be followed:

- 1) Vendor submits a written request for a protest meeting to the SPO within thirty calendar days from the date of award. The vendor's request shall contain reasons why it has a concern with the award and any supporting documentation.
- 2) **If a meeting is refused:** Within ten calendar days from the date of receipt, the SPO shall notify the vendor in writing that its protest met one of the following conditions:
  - a) It was not timely.
  - b) It did not contain required information.
  - c) It was meritless, and a meeting would have served no purpose.
- 3) **If a meeting is granted:** The meeting must be scheduled within thirty calendar days from receipt of the protest, unless mutually agreed.
- 4) Within ten calendar days after the meeting, the SPO shall notify the vendor of the results of the protest meeting and the appeal rights under Article 3 of G.S. 150B.
- 5) If there is any further administrative or judicial review of the contract award, the SPO shall notify the Secretary in writing.

## 9.3 Bid Protest Meeting

Bid protest meetings are typically about one hour in length, but the duration may be adjusted due to complexity of the issues raised in the bid protest letter. The protest meeting is an informal, non-adversarial meeting in which the protesting vendor has the opportunity to further explain its position to the state. The awarded vendor may attend the protest meeting and provide a response to the protest allegations but is not required to do so. Each party will be given a set period of time in which to present their side.

Because it is an informal process, not a hearing, evidence does not need to be presented, and witnesses do not need to be called. Counsel may attend and present on behalf of the protesting or awarded vendor but is not required to do so.

The bid protest meeting is an opportunity for the protesting vendor to further explain its position, for the awarded vendor to provide any comments in response, and for the state to ask questions to further clarify the issues. The protesting vendor and the awarded vendor shall direct their comments to the state and not to one another. The state is not required to defend its position or answer vendor questions in the protest meeting.



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