

CHAPTER 43 –SURPLUS PROPERTY

SUBCHAPTER 43A - STATE SURPLUS PROPERTY AGENCY

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 43A .0101 SCOPE

This Subchapter shall apply to entities engaging in the sale, purchase, or transfer of surplus property through the State Surplus Property Agency.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 43A .0102 DEFINITIONS

For the purposes of this Chapter, the following definitions apply:

- (1) "Employee" includes full-time exempt and non-exempt, part-time, temporary, and permanent employees of a state agency as defined in G.S. 143-64.02.
- (2) "Fair Market Price" means the agreed price, that price on which the seller, the State Surplus Property Agency and the buyer agree.
- (3) "Immediate Family" means spouse or children/stepchildren under the age of 18.
- (4) "SSPA" means the State Surplus Property Agency.
- (5) "State-Owned" means in the possession of the State of North Carolina and purchased with State funds, property donated to the State, or property purchased with other funds that give ownership of the property to the state.
- (6) "Surplus Property" means property no longer needed by a State agency.
- (7) "Non-Profit Tax Exempt organization" is defined in G.S. 143-64.02. Note that not all Non-Profit Tax Exempt organizations are eligible to use the services of the State Surplus Property Agency.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. July 1, 2007;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

SECTION .0200 – STATE SURPLUS PROPERTY

01 NCAC 43A .0201 SENSITIVE AND CONFIDENTIAL DATA

The owning agency shall clear and destroy all data from surplus items prior to disposal.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. April 1, 2009;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 43A .0202 COMPRESSED GASES, FLAMMABLE, NUCLEAR, CHEMICAL, BIOLOGICAL, RADIOACTIVE, AND OTHER HAZARDOUS MATERIALS

(a) The State Surplus Property Agency does not accept equipment or containers that contain compressed gases, or flammable, nuclear, chemical, biological, radioactive or other hazardous materials. Any container or equipment that has contained any of these materials must be rendered and declared safe by the owning agency, and a statement to this effect included in the item description when a disposal or sale of the item is requested. Any container or equipment that has been rendered and certified safe shall have labeling removed that would indicate that the container or equipment is contaminated or contains any of these items.

(b) All laws and regulations must be followed and proper disposal documentation recorded with various regulatory federal, state and local agencies for the transport, sale or disposal of items described in Paragraph (a) of this Rule.

(c) Laboratory equipment may be sold with regulated or non-regulated amounts of materials described in Paragraph (a) of this Rule. When hazardous materials are contained in a piece of equipment, all pertinent information related to types, amounts and any regulatory requirements shall be included in the item description when entered into the SSP System. If the equipment contains amounts that are not regulated by any federal, state, or local agency, the description of the equipment shall include the statement "Non-Regulated." These items shall be sold at the agencies location and not transported to the State Surplus Property Agency. The owning agency shall ensure all applicable laws and regulations are followed in the transport, sale or disposal of such items. If a potential buyer is required to be registered with any regulatory agency prior to taking possession of the equipment, the selling agency shall include all requirements in the description of the item and review and approve any required documentation presented by the successful bidder within 48 hours of the opening of the bids.

(d) Each agency shall contact its safety office and ensure that all federal, state and local regulations have been followed prior to the transport or disposal of items described in Paragraph (a) of this Rule.

(e) This Rule does not apply to equipment, watercraft, aircraft or vehicles that may contain gasoline, diesel fuel, liquefied propane, liquefied natural gas or other fuels when it is contained within a fuel tank or fuel cell approved by the manufacturer of the equipment, watercraft, aircraft or vehicle.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. April 1, 2009;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

SECTION .0300 - DISPOSAL OF SURPLUS PROPERTY

01 NCAC 43A .0301 TRANSFER OR SALE

The State Surplus Property Agency shall determine the method of transfer, sale, or disposal of all State owned property in the best interests of the State.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. July 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 43A .0302 NOTIFICATION OF SURPLUS

State agencies shall notify the State Surplus Property Agency of the Division of Surplus Property of any personal property which is surplus to their needs by entering the necessary information into the electronic State Surplus Property Disposal System. In doing so, agencies may suggest a fair market price which they desire to receive from any disposition made.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 43A .0303 TRADE-IN

(a) Agencies desiring to trade-in property for new or replacement property shall gain State Surplus Property Agency approval prior to said trade-in.

(b) Where an agency solicits competition for the purchase of a new item and it appears that a trade-in may be advantageous, the solicitation shall contain a provision requesting that a trade-in allowance be offered and the agency's Purchasing Officer shall seek approval from the State Surplus Property Agency prior to the issuance of a purchase order.

(c) It is the responsibility of the agency to document the advantages to the State of a proposed trade-in. However, the State Surplus Property Agency shall be the final authority when concluding advantages to the State.

(d) Advantages other than for cost-effectiveness and ease of disposal shall be considered exceptions, and shall be documented and approved by the agency head prior to submission to the State Surplus Property Agency for final determination.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 43A .0304 ORDER OF PRIORITY IN DISPOSITION

(a) In the disposition of state surplus property, the State Surplus Property Agency shall give first priority to other agencies of the state for purchase or transfer. Second priority shall be given to sales to political subdivisions and non-profit tax exempt organizations within the state. Property thus sold must be for the use of the recipient agency, political subdivision or non-profit tax exempt organization with title being in such agency, unit or organization.

(b) All titled vehicles transferred between state agencies must be processed through the State Surplus Property Agency with regard to titles and associated North Carolina Division of Motor Vehicles documents. Vehicles shall be transferred at fair market price.

(c) In making transfers over one hundred fifty dollars (\$150.00), the price shall be set by the owning agency in consultation with the State Surplus Property Agency. The price shall be based upon previous sales of similar products on the open market. All transfers of property from or to a receipt-supported agency shall include an exchange of funds.

(d) State surplus property sold to any political subdivision or non-profit tax exempt organization must be retained by the unit or organization not less than 12 months before disposal.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. July 1, 2007;
Amended Eff. April 1, 2009;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 43A .0305 DISPOSAL BY EXECUTIVE ORDER

Notwithstanding 01 NCAC 43A .0304, the Governor, through Executive Order, may direct the disposal of surplus State property by transfer or donation to any North Carolina State agency or political subdivision or to the State Government of any other State within the United States, in response to a declared Federal or North Carolina State Disaster.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 43A .0306 BIDDING AND PURCHASES PROHIBITED BY EMPLOYEES AND IMMEDIATE FAMILY MEMBERS

(a) To avoid conflicts of interest, bidding on or purchase of state surplus property is prohibited to State Surplus Property Agency employees and their immediate family members.

(b) All State employees specified as custodian of state property for a state agency, and their immediate family members, are prohibited from bidding on or purchasing the surplus property of the employing state agency.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. July 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 43A .0307 PUBLIC SALE

Unless otherwise disposed of in accordance with G.S. 143-64.03 or Rule .0305 of this Section, State Surplus Property shall be offered for public sale. Public sale is through sealed competitive bids, competitive bids, electronic bids, negative bids, auction, and retail sales.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;

Readopted Eff. November 1, 2019.

01 NCAC 43A .0308 FIRST-COME FIRST-SERVED

State surplus property shall be sold on a first-come, first served basis when:

- (1) the property is sold at a retail store to the general public; or
- (2) the property is transferred to state agencies, political subdivisions, or non-tax exempt organizations.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0309 REJECTION OF BIDS

(a) Any and all bids may be rejected if in the best interest of the state.

(b) Bids may also be rejected in whole or in part if:

- (1) The winning bidder has failed to pay for or pick up surplus property awarded;
- (2) The bid is submitted by an ineligible bidder pursuant to Rule .0315 of this Section;
- (3) The bid does not comply with the terms and conditions of the State Surplus Property Agency;
- (4) The bid is not legible or the information provided is inaccurate, incomplete or needs clarification;
- (5) The bid does not comply with the requirements of the request and solicitation as set forth in the bid; or
- (6) Bid rejection is recommended by the State Capitol Police, State Bureau of Investigation, Federal Bureau of Investigation, or other Homeland Security entity. In such cases, the security entity must provide a written statement requesting rejection and that the recommendation is based on homeland security concerns. In the event of receipt of a security based bid rejection recommendation, the State Surplus Property Agency shall reject the bid without further supporting documentation.

(c) If a bid is rejected in whole or in part, State Surplus Property may:

- (1) re-advertise the property;
- (2) award the property to the next highest bidder from the initial bid; or
- (3) negotiate the sale of the property in the best interest of the State.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. July 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0310 RECEIPT OF BIDS

The bidder shall ensure that the bid is received in the State Surplus Property Agency by the time and date set forth in the bid.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0311 INSPECTION OF PROPERTY

(a) All property is sold "as is" and "where is." Bidders may inspect property prior to submitting bids. Opportunity shall be afforded for inspection up to the time a bid is awarded, but no labor or materials shall be furnished to a bidder for such purpose.

(b) Photographs and descriptions are provided for the purpose of aiding the bidder to identify the property and shall not be used to determine quality or condition of the property. Descriptions by the custodian of the property shall not be considered by the State Surplus Property Agency nor shall they be grounds for disputing an award.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0312 STATE DOES NOT GUARANTEE

- (a) The description of the property offered for sale is compiled from information available to the State Surplus Property Agency at the time the bid is prepared. All property is sold "as is" and "where is."
- (b) State Surplus Property Agency may withdrawal the offer to sell prior to the award when in the best interest of the State.
- (c) The winning bidder shall be responsible for any cost of weighing, packaging, crating, loading or hauling of property.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0313 REFUNDS

- (a) No refund shall be made upon the following:
 - (1) property not meeting the bidder's expectation;
 - (2) bidder's failure to inspect prior to sale; or
 - (3) change of condition of property from the time of award to the time of pickup.
- (b) No refund shall be given unless a change in value has occurred from the initial inspection of the property until the time of the award as determined by the State Surplus Property Officer based on condition of the property.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0314 EXTENSION TO PAY OR REMOVE PROPERTY

- (a) Extensions to pay or remove property shall be granted under the following conditions:
 - (1) the purchaser's inability to pay or remove property is due to the actions or inactions of the State Surplus Property Agency or the custodian of the property; and
 - (2) the State Surplus Property Officer determines that space is available to allow a delay in the removal of property.
- (b) The purchaser shall not be eligible for refund for the change in the condition of the property as a condition of the extension.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0315 FAILURE TO PAY OR REMOVE PROPERTY

- (a) Unless extended in accordance with Rule .0314 of this Chapter, if the bidder fails to pay in full for the property by the time and date indicated on the notice of award, the award shall be rescinded, and the defaulting bidder shall be charged with loss to the State, if any, together with all expenses of the sale.
- (b) If the bidder does not remove the property purchased by the time and date indicated on the notice of award, the State Surplus Property Agency shall retain the purchase price, and resell the property a second time and retain all proceeds therefrom.
- (c) Bidders who fail to pay shall be ineligible for award of future bids.

*History Note: Authority G.S. 143-64.01; 143-64.04; 143-64.05;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0316 BOND

- (a) The selling entity or the State Surplus Property Agency may require performance bonds for the purchase of commodities when hazards to the environment may occur on property and require additional costs.
- (b) The selling entity or the State Surplus Property Agency shall set the amount and terms of the bond based on an assessment of the property and estimated value.
- (c) Selling agencies shall document the need for performance bonds.

- (d) Selling agencies shall request a bond release from the State Surplus Property Agency once the requirements of the bond have been met by the bidder.
- (e) Selling agencies shall submit a letter verifying compliance with the terms of the bond to the State Surplus Property Agency for any refund in whole or in part of the performance bond.
- (f) The State Surplus Property Agency shall make a determination on releasing the performance bond based on the bidder's level of compliance with the terms of the bond.

*History Note: Authority G.S. 143-53(a); 143-64.01; 143-64.04; 143-64.05;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0317 DEMOLITION OF STATE BUILDINGS

- (a) The State Surplus Property Agency may, if in the best interest of the State, be responsible for bids and awards of contracts for the demolition of state buildings, including those of universities, hospitals, and other state entities.
- (b) The State Surplus Property Office shall send a request for bid to any interested party upon request as well as to entities on a list maintained by the State Surplus Property Office. Request for bids may be sent to the State Surplus Office via mail, email, or through the online listserv request at <https://ncadmin.nc.gov/citizens/state-surplus-property/email-notifications>.
- (c) The owning entity shall submit a letter of approval pursuant to G.S. 143-341(4) from the Council of State regarding the demolition of a state building to the State Surplus Property Agency.
- (d) The bidder shall obtain all necessary permits, insurances, licenses, performance bonds and other requirements to complete the demolition.

*History Note: Authority G.S. 143-64.01; 143-64.04; 143-64.05;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0318 TIMBER SALES, PINESTRAW, AND FOREST COMMODITIES SALES

The State Surplus Property Agency shall dispose of timber, pine straw, and other forest commodities owned by state agencies through a public sale. A request for bid shall be sent to any interested party upon request as well as to entities on a list maintained by the State Surplus Property Office.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0319 SURPLUS WEAPONS AND FIREARMS

- (a) With the exception of service side arms within the scope of G.S. 20-187.2, surplus weapons and firearms possessed by the North Carolina State Highway Patrol, North Carolina Division of Adult Correction and Juvenile Justice of the Department of Public Safety and the North Carolina State Bureau of Investigation, may be sold through the State Surplus Property Agency to a federally licensed firearm dealer upon written request pursuant to G.S. 143-63.1(d) to sell weapons on their behalf.
- (b) The written request shall include the following information for each weapon:
 - (1) description by make and model number;
 - (2) serial number; and
 - (3) any federal or state restrictions on the sale of non-firearm weapons.
- (c) Surplus weapons and firearms sales shall be made by public sale in accordance with paragraph (b) or (d) of G.S. 143-63.1.
- (d) The State Surplus Property Agency shall authorize the release of the weapons to the winning bidder upon receipt of the following information:
 - (1) payment in full;
 - (2) proof of identification; and
 - (3) proof of eligibility which shall include:
 - (A) a valid federal firearms license, if purchased pursuant to G.S. 143-63.1(d); or
 - (B) a notarized statement by the agency certifying the law enforcement need for the weapon, if purchased pursuant to G.S. 143-63.1(b).

*History Note: Authority G.S. 143-63.1; 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*

01 NCAC 43A .0320 PAYMENT

- (a) All payments shall be in the form of cash, credit, debit, cashier's or certified check, postal money order, or other methods as approved by the Department of Administration Fiscal Officer which may include electronic payments.
- (b) Payment for retail sales items shall be made at the time of purchase and shall be made at the retail site where the property is located.
- (c) Payment in full for all purchases other than those made at a retail site shall be made by the time and date indicated on the notice of award and shall be made directly to the State Surplus Property Agency.
- (d) Entities shall not accept payments on behalf of the State Surplus Property Agency.
- (e) Extensions to pay or remove property shall be in accordance with 01 NCAC 43A .0314.
- (f) No property may be removed by the bidder prior to full payment of the purchase price.
- (g) Entities shall not release property prior to verifying that payment in full has been made to the State Surplus Property Agency. Entities shall assume all responsibility related to the release.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007;
Readopted Eff. November 1, 2019.*