DEFINITIONS

For the purpose of this Chapter:

(1) "Agency" means all departments, institutions, boards, commissions, universities, community colleges or other units of the State, unless specifically exempted by statute.

(2) "Best and Final Offer" ("BAFO") is a document that memorializes the details of Negotiations between the State and a Vendor and mutually modifies the Vendor's Offer.

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

(4) "Bid Value Benchmark" or "General Delegation" means the maximum authorized expenditure set pursuant to G.S. 143-52(a) and 143-53.1 for which an agency may contract to purchase Goods or Services without obtaining prior approval for the purchase from the Division.

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

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

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

(8) "Competitive Range" means a rational grouping of the most competitive Offers as determined by the Purchasing Agency.

(9) "Contract" means any type of agreement entered into by State Agencies, regardless of what it may be titled or called, setting out the obligations of the parties concerning a Procurement of Goods or Services.

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

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

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

(13) "Electronic Bid System" means the Division's Electronic system used variously to advertise Solicitations, notify Vendors, conduct Reverse Auctions, and post contract awards.

(14) "Emergency Situations" means unforeseen circumstances that endanger lives, property, or the continuation of a vital program, as determined by the purchasing Agency Director, and that can be rectified only by immediate purchases or rental of Goods or Services.

(15) "Goods" means any tangible property, including all equipment, materials, supplies and commodities. Unless the context requires otherwise, acquisition of printing shall be considered the purchase of Goods under these Rules.

(16) "Goods Contract" means any agreement involving the Procurement of Goods from a Vendor, but which may also have ancillary Services aspects.

(17) "Negotiation" means oral or written communications in a waived or open competitive Procurement between the State and Vendor undertaken with the intent of allowing Vendor to revise their Offers. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed contract. Negotiations are specific to each Offer and shall be conducted to maximize the State's ability to obtain best value based on the evaluation factors set forth in the Solicitation. Negotiations shall be memorialized in any resulting Contract.

(18) "Offer" means a bid, proposal, BAFO or other proposition submitted in response to any Solicitation, Negotiation, or other approved acquisition process, as well as responses to solution-based Solicitations and government-Vendor partnerships.

(19) "Personal Service Contract" has the same definition as in G.S. 143-48.6(b). Personal Service Contracts may include Contracts with a doctor, dentist, attorney, architect, professional engineer,
scientist or performer of the fine arts or similar professions. Personal Services Contracts are a type of Service Contract.

(20) "Pressing Need" means a need arising from unforeseen causes outside the State's control, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, which can be satisfied only by immediate purchase or rental of Goods or Services.

(21) "Price" means the amount paid by the State to a Vendor for Goods or Services.

(22) "Procurement" means the process of acquiring Goods or Services.

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

(24) "Public Funds" means any amount received, held, disbursed or otherwise subject to or accounted for in accordance with the State Budget Act and amounts used to acquire Goods and Services that are required to be purchased in accordance with Article 3 of Chapter 143 of the General Statutes.

(25) "Purchasing Agency" or "Purchaser" means the Agency that issues a purchase order or otherwise acquires Goods or Services through a purchasing process.

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

(27) "Responsible Vendor" means a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.

(28) "Responsive Offer" means an Offer that conforms to the Requirements of the Solicitation in all respects to be considered by the State for award.

(29) "Requirement" is a provision of a Solicitation and any resulting Contract which prescribes the nature or details of a standard, process or procedure that must be complied with by the Vendor before any further evaluation of the Offer is conducted by the State.

(30) "Sealed Offer" means an Offer that remains unopened until the public opening time stated in the Solicitation.

(31) "Secretary" means the Secretary of the NC Department of Administration.

(32) "Service Contract" means any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, expertise or similar capabilities in the Vendor. Contracts for Consultant Services and Personal Services are also types of a Service Contract. A Service Contract may also involve the ancillary purchase of Goods.

(33) "Services" means the tasks and duties undertaken by a Vendor in a Service Contract to fulfill the requirements and Specifications of the Contract.

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

(35) "Small Purchase" means the purchase of Goods and Services not covered by a Term Contract where the expenditure of Public Funds is less than a Small Purchase Benchmark amount.

(36) "Solicitation" means a Written or Electronic Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), Best and Final Offer (BAFO), Request for Information (RFI) or other such documents used to solicit or invite Vendor Offers, or to request information regarding the acquisition of Goods and Services, including all mutually agreed attachments and items incorporated by reference.

(37) "Specification" means any description of the physical or functional characteristics of, or the nature of, the Goods or Services to be procured.

(38) "SPO" means the State Procurement Officer.

(39) "Tabulation" means a list of Vendors submitting Offers in response to a particular Solicitation and, if applicable, the prices Offered as allowed under G.S. 143-52(a).

(40) "Technical Offer" means a proposal by a Vendor in response to the Solicitation, absent the price content.

(41) "Term Contract" is a binding agreement between purchaser and seller to buy and sell certain commodities, printing, or services at certain prices and under stipulated terms and conditions.
(42) "Total Cost of Ownership" means a summation of all purchase, operating, and related costs to be expended during the projected lifetime of a Good or Service or both.

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

(44) "Voided Bid" means an Electronic bid that was submitted by a Vendor in connection with an Electronic Solicitation that has been cancelled, the bids voided and not opened electronically.

(45) "Weakness" means a flaw in the Offer that increases the risk of unsuccessful contract performance.

(46) "Withdrawal" or "Withdrawn Bid" means a Bid that is rescinded by the Vendor prior to the bid opening.

(47) "Written" or "Writing" means a communication recorded in a medium of expression that can be preserved, read, retrieved, and reproduced for an indefinite period of time, including information in a form that is electronically transmitted and stored.

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