

## CHAPTER 05 - PURCHASE AND CONTRACT

### SUBCHAPTER 05A – DIVISION OF PURCHASE AND CONTRACT

#### 01 NCAC 05A .0101 RESPONSIBILITY

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

*History Note: Authority G.S. 143-49; 143-341;  
Eff. February 1, 1976;  
Readopted Eff. February 27, 1979;  
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

#### 01 NCAC 05A .0102 SCOPE

The program administered by the Division of Purchase and Contract shall be based on sound competitive purchasing procedures, sound management of personal property, and the economical disposal of State property; and shall include the following where public funds are involved:

- (1) acquisition of equipment, materials, and supplies, for all agencies;
- (2) acquisition of all printing, rentals, leases and services for all agencies, except for community colleges and local school administrative units;
- (3) making purchasing services available to non-state agencies identified in G.S. 143-49 and 143-49.1;
- (4) establishment and enforcement of purchase specifications;
- (5) inspection and testing of products;
- (6) review of agency purchasing and warehousing practices to ensure compliance with operating rules and procedures established by the SPO.

*History Note: Authority G.S. 143-49; 143-49.1; 143-53; 143-56; 143-60;  
Eff. February 1, 1976;  
Readopted Eff. February 27, 1979;  
Amended Eff. February 1, 1996; July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

#### 01 NCAC 05A .0103 ORGANIZATION

*History Note: Authority G.S. 143B-9; 143B-10;  
Eff. February 1, 1976;  
Readopted Eff. February 27, 1979;  
Repealed Eff. July 1, 1987.*

#### 01 NCAC 05A .0104 LOCATION

The principal offices of the Division of Purchase and Contract are located in the Administration Building, 116 West Jones Street, Raleigh, N.C. 27603-8002.

*History Note: Authority G.S. 143B-10;  
Eff. February 1, 1976;  
Readopted Eff. February 27, 1979;  
Amended Eff. February 1, 1996;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

#### 01 NCAC 05A .0105 RULE-MAKING AUTHORITY

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

*Eff. February 1, 1976;*  
*Readopted Eff. February 27, 1979;*  
*Repealed Eff. July 1, 1987.*

**01 NCAC 05A .0106      STANDARDIZATION COMMITTEE**  
**01 NCAC 05A .0107      INSPECTION OF STANDARDS**

*History Note:      Authority G.S. 143-53; 143B-397; 143B-398;*  
*Eff. February 1, 1976;*  
*Readopted Eff. February 27, 1979;*  
*Repealed Eff. June 1, 1986.*

**01 NCAC 05A .0108      FORMS: PROCEDURES: TERMS AND CONDITIONS**

The Division of Purchase and Contract establishes procedures for acquiring commodities, printing and services and prescribes forms, consistent language, terms and conditions and advertisement requirements, applicable to all agencies for such action. The procedures, forms, consistent language, terms and conditions and advertisement requirements shall be established taking into consideration market conditions and trends, legal requirements, and factors determined to be in the State's best interest. These shall be furnished to all agencies.

*History Note:      Authority G.S. 143-51; 143-53; 143-55; 143-60;*  
*Eff. February 1, 1976;*  
*Readopted Eff. February 27, 1979;*  
*Amended Eff. April 1, 1999; May 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

**01 NCAC 05A .0109      BOARD OF AWARD**  
**01 NCAC 05A .0110      ADMINISTRATIVE PROCEDURES**

*History Note:      Authority G.S. 143-53; 150B-2; 150B-22; 150B-23;*  
*Eff. February 1, 1976;*  
*Readopted Eff. February 27, 1979;*  
*Amended Eff. August 1, 1988; May 1, 1988; July 1, 1987;*  
*Repealed Eff. February 1, 1996.*

**01 NCAC 05A .0111      INFLATION POLICY**

*History Note:      Authority G.S. 143-48; 143-49; 143-53;*  
*Eff. February 27, 1979;*  
*Repealed Eff. June 1, 1986.*

**01 NCAC 05A .0112      DEFINITIONS**

For the purpose of this Chapter:

- (1) "Agency" or "Agencies" means all departments, institutions, boards, commissions, universities, community colleges, or other units of the State subject to G.S. 143, Article 3, unless specifically exempted by statute.
- (2) "Best and Final Offer" ("BAFO") is a document that memorializes the details of Negotiations between the State and a Vendor and mutually modifies the Vendor's Offer.
- (3) "Best Value Procurement" shall have the same meaning as in G.S. 143-135.9.
- (4) "Bid Value Benchmark" or "General Delegation" means the maximum authorized expenditure set pursuant to G.S. 116-31.10, G.S. 115D-58.14, or G.S. 143-52(a) and 143-53.1 for which an Agency may contract to purchase Goods or Services without obtaining prior approval for the purchase from the Division.
- (5) "Clarification" means communications between the State and a Vendor that occur after receipt of a Vendor's Offer made for the purpose of eliminating irregularities, informalities, or apparent clerical mistakes in an Offer. A Clarification may also be used in order for the State to interpret an Offer or

Offers or to facilitate the State's evaluation of all Offers. A Clarification shall not be used to cure material deficiencies in an Offer, alter the scope of an Offer, or to negotiate.

- (6) "Consultant Services" means contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications to investigate a Purchasing Agency's defined problems or projects and to provide counsel, review, analysis, or advice in formulating or implementing improvements in programs or Services. This includes improvements related to the organization, planning, directing, control, evaluation, and operation of a program, Agency or department.
- (7) "Competition" in purchasing exists when the available market for the Goods or Services to be acquired consists of more than one Responsible Vendor that is qualified and willing to submit an Offer.
- (8) "Contract" means any type of agreement entered into by Agencies, regardless of what it may be titled or called, setting out the obligations of the parties concerning a Procurement of Goods or Services.
- (9) "Contract Term" means the time period in which a Contract is active and in effect.
- (10) "Deficiency" means either a failure to meet a stated Requirement or a combination of weaknesses in an Offer that increases the risk that a Vendor will be unable to meet its contractual obligations.
- (11) "Division" means the Division of Purchase and Contract.
- (12) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
- (13) "Electronic Bid System" means the Division's Electronic system used variously to advertise Solicitations, notify Vendors, conduct Reverse Auctions, and post Contract awards.
- (14) "Emergency Situations" means unforeseen circumstances as stated in G.S. 143-57, that endanger lives, property, or the continuation of a vital program such as those essential for health or safety, as determined by the Purchasing Agency Director, and that can be rectified only by immediate purchases or rental of Goods or Services.
- (15) "Extension" means an additional Contract Term not provided for in the Contract that is mutually agreed to by the State and all Vendor parties in a Contract amendment.
- (16) "Goods" means any tangible property, including all equipment, materials, supplies, and commodities. Where the printing is not the predominant aspect of a service contract, acquisition of printing shall be considered the purchase of Goods under these Rules.
- (17) "Goods Contract" means any agreement involving the Procurement of Goods from a Vendor, but that may also have ancillary Services aspects.
- (18) "Initial Contract Term" means the initial period for performance under a Contract after which the Contract will either terminate or be extended pursuant to a Renewal or Extension.
- (19) "Negotiation" means oral or written communications in a waived or open competitive Procurement between the State and Vendor undertaken with the intent of allowing a Vendor to revise its Offer. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed Contract. Negotiations are specific to each Offer and shall be conducted to maximize the State's ability to obtain best value based on the evaluation factors set forth in the Solicitation. Negotiations shall be memorialized in any resulting Contract.
- (20) "Offer" means a bid, proposal, BAFO, or other proposition submitted in response to any Solicitation, Negotiation, or other approved acquisition process, as well as responses to solution-based Solicitations and government-Vendor partnerships.
- (21) "Personal Services Contract" has the same definition as in G.S. 143-48.6(b). A Personal Services Contract is a type of Service Contract.
- (22) "Pressing Need" means a need arising from unforeseen causes as stated in G.S. 143-57, outside the State's control, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, as determined by the Purchasing Agency Director, which can be satisfied only by immediate purchase or rental of Goods or Services.
- (23) "Price" means the amount paid by the State to a Vendor for Goods or Services.
- (24) "Procurement" means the process of acquiring Goods or Services.
- (25) "Professional Services" means the contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications, who provides ongoing Services. A Professional Services Contract is a type of Service Contract.
- (26) "Progressive Award" means an award for portions of a definite quantity requirement to more than one Vendor. Each portion is for a definite quantity and the sum of the portions is the total quantity

procured. A Progressive Award may be in the Purchasing Agency's best interest when awards to more than one Vendor for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

- (27) "Public Funds" means any amount received, held, disbursed, or otherwise subject to or accounted for in accordance with the State Budget Act and amounts used to acquire Goods and Services that are required to be purchased in accordance with Article 3 of Chapter 143 of the General Statutes.
- (28) "Purchasing Agency" or "Purchaser" means the Agency that issues a purchase order or otherwise acquires Goods or Services through a purchasing process.
- (29) "Recalled Bid" means a Bid that is rescinded by the Vendor after the bid opening but prior to a contract being awarded.
- (30) "Renewal" means an optional term provided for in the Contract that can be exercised as of right by the State.
- (31) "Responsible Vendor" means a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
- (32) "Responsive Offer" means an Offer that conforms to the Requirements of the Solicitation.
- (33) "Requirement" is a provision of a Solicitation and any resulting Contract that prescribes the nature or details of a standard, process, or procedure that must be complied with by the Vendor before any further evaluation of the Offer is conducted by the State.
- (34) "Sealed Offer" means an Offer that remains unopened until the public opening time stated in the Solicitation.
- (35) "Secretary" means the Secretary of the North Carolina Department of Administration.
- (36) "Service Contract" means any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, expertise, or similar capabilities in the Vendor. Contracts for Consultant Services, Professional Services, and Personal Services are also examples of a Service Contract. A Service Contract may also involve the ancillary purchase of Goods.
- (37) "Services" means the tasks and duties undertaken by a Vendor in a Service Contract to fulfill the Requirements and Specifications of the Contract.
- (38) "Signature" means a manual autograph, an Electronic identifier, or an Electronic authentication technique, that is intended by the person using it to have the same force and effect as a manual signature.
- (39) "Small Purchase" means the purchase of Goods and Services not covered by a Term Contract where the expenditure of Public Funds including Extensions and Renewals is equal to or less than the Small Purchase Benchmark amount, pursuant to 01 NCAC 05B .0301.
- (40) "Solicitation" means to request or invite Vendor Offers, or to request information regarding the acquisition of Goods and Services, through the use of Solicitation Documents.
- (41) "Solicitation Documents" means a Written or Electronic (a) Invitation for Bids (IFB); (b) Request for Quotations (RFQ); (c) Request for Proposals (RFP); (d) Best and Final Offer (BAFO); or (e) other documents to invite Vendor Offers, including all mutually agreed attachments and items incorporated by reference therein.
- (42) "Specification" means any description of the physical or functional characteristics of, or the nature of, the Goods or Services to be procured.
- (43) "SPO" means the State Procurement Officer who is also the Director of the Division.
- (44) "Tabulation" means a list of Vendors submitting Offers in response to a particular Solicitation and, if applicable, the prices offered as allowed under G.S. 143-52(a).
- (45) "Technical Offer" means a proposal by a Vendor in response to the Solicitation, absent the price content.
- (46) "Term Contract" is a binding agreement between purchaser and seller to buy and sell certain Goods or Services at certain prices, for an agreed Contract Term, and under specific terms and conditions.
- (47) "Total Cost of Ownership" means a summation of all purchase, operating, and related costs to be expended during the projected lifetime of a Good or Service or both.
- (48) "Vendor" means a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual, or other entity submitting a response to a Solicitation.
- (49) "Voided Bid" means an Electronic bid that was submitted by a Vendor in connection with an Electronic Solicitation that has been cancelled, the bids voided and not opened electronically.
- (50) "Weakness" means a flaw in the Offer that increases the risk of unsuccessful contract performance.

- (51) "Withdrawal" or "Withdrawn Bid" means a Bid that is rescinded by the Vendor prior to the bid opening.
- (52) "Written" or "Writing" means a communication recorded in a medium of expression that can be preserved, read, retrieved, and reproduced for an indefinite period of time, including information in a form that is electronically transmitted and stored.

*History Note: Authority G.S. 143-48.3; 143-48.6; 143-49; 143-52; 143-53; 143-53.1; 143-57; 143-135.9; Eff. February 1, 1996; Amended Eff. April 1, 1999; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. March 1, 2022; November 1, 2021; October 1, 2019.*