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;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;

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;

01 NCAC 05A.0103 ORGANIZATION

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

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;

01 NCAC 05A.0105 RULE-MAKING AUTHORITY

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

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;

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

"Recalled Bid" means a Bid that is rescinded by the Vendor after the bid opening but prior to a contract being awarded.

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

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

"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.

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

"Secretary" means the Secretary of the NC Department of Administration.

"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.

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

"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.

"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.

"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.

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

"SPO" means the State Procurement Officer.

"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).

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

"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.

"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.

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

"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.

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

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

"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;