

SUBCHAPTER 05D - CONSULTANT CONTRACTS

SECTION .0100 - CONSULTANTS

01 NCAC 05D .0101 APPLICABILITY

The Rules in this Section and Section .0200 are applicable to all agencies except local school administrative units and Community Colleges.

The Rules in this Section and Section .0200 do not apply to contracts for attorneys employed by the North Carolina Department of Justice or by other agencies of state government pursuant to the provisions of G.S.147-17, to contracts for physicians or doctors providing direct medical care for the clientele of any state agency, to contracts entered into by the General Assembly or its special study commissions, to contracts entered into by the Institute of Government to provide or obtain consulting or advisory services, to contracts to provide services without compensation to the provider of the services or to his employing agency or to contracts entered into by a state agency pursuant to specific statutory authority which provides, in the opinion of the Governor or designee, a specific alternative procedure for the selection and award of such contracts.

*History Note: Authority G.S. 143-64.24; 147-17;
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 05D .0102 DEFINITION

Consultant services shall mean work or task(s) performed by State employees or independent contractors 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 but is not limited to the organization, planning, directing, control, evaluation and operation of a program, agency or department.

*History Note: Authority G.S. 143-64.21;
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.*

SECTION .0200 - CONTRACTING PROCEDURE FOR CONSULTANTS

01 NCAC 05D .0201 GENERAL STATEMENT OF POLICY

State agencies shall acquire consultive services only when the contract is in the best interests of the State. In acquiring such services, competition shall be sought whenever practicable as determined by the Division of Purchase and Contract. No agency which is subject to the provisions of this Subchapter may contract for services of a consultant nature except in accordance with the provisions of this Subchapter.

*History Note: Authority G.S. 143-64.21;
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 05D .0202 CONSULTING CONTRACTS WITH OTHER AGENCIES

Whenever possible consultant services shall be obtained from other agencies when the services available from other agencies substantially meet the reasonable specifications of the requesting agency.

*History Note: Authority G.S. 143-64.22;
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 05D .0203 REQUESTS FOR AUTHORITY TO CONTRACT WITH CONSULTANTS

Before receiving authorization to seek consultant services, an agency shall submit to the Division of Purchase and Contract written justification for its request for consultant services. This written justification shall at a minimum explain what services the agency desires to secure, why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency, how the work to be performed relates to the proper functions of the agency, what benefits the agency expects to receive from the consultant's services, what the agency estimates to be the cost of the services sought, and what potential sources of consultant services if any the agency has identified. 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 were not available from those sources. The written justification shall be accompanied by a letter of endorsement for the proposed contract(s) from the agency head or his designee.

History Note: Authority G.S. 143-64.21; 143-64.22;

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 05D .0204 REVIEW OF AGENCY REQUESTS

The documents submitted by agencies requesting authority to retain consultants will be reviewed by the Division of Purchase and Contract. 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; or
- (2) solicit proposals from private contractors; or
- (3) execute a negotiated contract(s) without competitive proposals if the Division of Purchase and Contract and the Governor have determined that performance or price competition is not available or that the requirement is for an authorized cooperative project with another governmental unit(s) or a public or private nonprofit organization(s) or that the contract price is too small to justify soliciting competitive proposals; or
- (4) abandon the project for being outside the scope of the agency's responsibilities or for having insufficient benefit to the State relative to the potential expenditure of funds.

History Note: Authority G.S. 143-64.20 to 64.22;

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 05D .0205 COMPETITIVE PROPOSALS

(a) An agency which receives approval to solicit proposals for consultant services shall:

- (1) Prepare a request for proposals in accordance with these Rules and disseminate among prospective service providers;
- (2) Circulate the request for proposals to such sources of consultant services as may be identified by the Division of Purchase and Contract as well as all sources identified by the requesting agency;
- (3) Publicly open all proposals received at a date and time set in the request for proposals; however, in a two-step evaluation process, only the technical proposal shall be opened on the opening date. The cost proposal is opened only if the technical proposal is determined by the State to be acceptable;
- (4) Upon receipt of proposals submit a copy of each proposal received to the Division of Purchase and Contract;
- (5) Review all proposals received on the basis of evaluation criteria significantly related to the function to be performed and equally applied to all proposals received;

(6) Submit a memorandum to the Division of Purchase and Contract citing criteria for selection and recommending contract award.

(b) The Division of Purchase and Contract shall evaluate all proposals received in accordance with the requirements of the request for proposals and shall consider the recommendations of the requesting agency. Upon completion of the Division's analysis, the Division shall forward a recommendation to the Governor. The requesting agency shall be notified in writing by the Governor or designee that all proposals have been rejected or that the agency head is authorized to execute a contract(s) with an approved service provider(s).

History Note: Authority G.S. 143-64.20 through 64.23;
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 05D .0206 NEGOTIATED CONSULTANT CONTRACTS

An agency which receives authorization to enter into a negotiated contract(s) for consultant services without soliciting competitive proposals shall submit the proposed contract(s) to the Division of Purchase and Contract for review and approval prior to execution. Upon completion of this review the requesting agency shall be notified in writing by the Governor or his designee that an approved contract(s) may be executed by the agency head.

History Note: Authority G.S. 143-64.20 through 64.23;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05D .0207 CONSULTANT CONTRACT MODIFICATION

Any modification to an approved contract(s) shall be subject to the same approval requirements as the original contract(s). The Governor or his designee may at his option, during the process of reviewing requests for contract modifications, waive any of the provisions of .0203 of this Section.

History Note: Authority G.S. 143, Article 3C;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05D .0208 FORMAT

All contracts for consultant services shall be in writing and in a format approved by the Division of Purchase and Contract. Contracts must be executed by the department head in the case of the executive departments of state government, by the chief executive officer of independent boards and agencies, by the President of the University of North Carolina for contracts to which the university or any of its constituent institutions is to be a party, or by agents of above named officials who have been specifically designated by those officials and whose names and positions have been filed with the Division of Purchase and Contract and whose designation has been approved by the Division of Purchase and Contract and the Governor or his designee.

History Note: Authority G.S. 143, Article 3C;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05D .0209 RELATIONSHIP OF CONSULTANT TO STATE

No contract for consultant services shall create an employer-employee relationship between the State of North Carolina and the consultant.

History Note: Authority G.S. 143-64.21;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.

01 NCAC 05D .0210 CONSULTANT CONTRACTS CONTRARY TO THIS SECTION

History Note: Authority G.S. 143-64.23; 143-1; 143-32;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .0300 - SERVICE CONTRACTS

- 01 NCAC 05D .0301 APPLICABILITY**
- 01 NCAC 05D .0302 EXEMPTIONS**
- 01 NCAC 05D .0303 DEFINITIONS**

History Note: Authority G.S. 143-49; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .0400 - CONTRACTING PROCEDURE

- 01 NCAC 05D .0401 GENERAL POLICY STATEMENT**
- 01 NCAC 05D .0402 JUSTIFICATION**
- 01 NCAC 05D .0403 TASK DESCRIPTION**

History Note: Authority G.S. 143-49; 143-53; 143-58;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Repealed Eff. February 1, 1996.

SECTION .0500 - COMPETITIVE PROCEDURES

- 01 NCAC 05D .0501 GENERAL REQUIREMENTS**
- 01 NCAC 05D .0502 SERVICES COSTING UP TO \$500.00**
- 01 NCAC 05D .0503 SERVICES COSTING OVER \$500.00, BUT UNDER \$5,000**
- 01 NCAC 05D .0504 SERVICES COSTING OVER \$5,000**
- 01 NCAC 05D .0505 SINGLE SOURCE SERVICES**
- 01 NCAC 05D .0506 RENTAL AGREEMENTS**
- 01 NCAC 05D .0507 GROUPING OF SERVICE PURCHASES**
- 01 NCAC 05D .0508 GENERAL CONTRACTING REQUIREMENTS**
- 01 NCAC 05D .0509 REQUEST FOR PROPOSALS**

History Note: Authority G.S. 143-49; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. August 1, 1988; July 1, 1987; January 1, 1985;
Repealed Eff. February 1, 1996.

SECTION .0600 - CONTRACTUAL AND CONSULTANT SERVICE FORMS

