

## SUBCHAPTER 06A – INFORMATION TECHNOLOGY PROCUREMENT

### SECTION .0100 – FORMS, TERMS AND CONDITIONS AND DEFINITIONS

This Chapter was transferred and recodified from 4 NCAC 21 effective September 1, 2000. [S.L. 2000-174]

#### 09 NCAC 06A .0101 FORMS, TERMS AND CONDITIONS

In these Rules the State Chief Information Officer (State CIO) shall prescribe forms, terms and conditions and advertisement requirements for acquiring goods and services related to information technology (IT) for use by purchasing agencies. The forms, terms and conditions, and advertisement requirements shall be established taking into consideration market volatility, trends and conditions, legal requirements, and any other factors determined to be in the State's best interest. These shall be made available to all agencies via the State's designated IT procurement website.

*History Note: Authority G.S. 147-33.76(b1); 147-33.77(f); 147-33.82; 147-33.95(f);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### 09 NCAC 06A .0102 DEFINITIONS

For the purpose of this Chapter,

- (1) "Agency/Agencies" is defined as an entity enumerated in G.S. 147-33.81(6).
- (2) "Best value procurement" is defined as a procurement process with the objective of reducing the total cost of ownership. The particular procurement methods used are selected so as to result in the best value for the State in terms of the function to be performed or delivered. Competitive best value procurement allows for the use of alternate competitive purchasing techniques in addition to low price analysis in the selection of supply sources.
- (3) "Clarification" is defined as communication between the State and an offeror that may occur after receipt of an offer for the purpose of eliminating irregularities, informalities, or apparent clerical mistakes in an offer. A clarification may also be used to allow the State's reasonable interpretation of an offer or offers or to facilitate the State's evaluation of all offers. Clarification shall not be used to cure material deficiencies or to negotiate.
- (4) "Commodity" is defined as tangible or moveable goods, equipment, materials or supplies.
- (5) "Competition" in purchasing exists when the available market for the goods or services to be acquired consists of more than one supplier who is technically qualified and willing to submit an offer.
- (6) "Competitive range" is defined as the range of all of the most highly ranked offers as established in the solicitation and as determined by the purchasing agency during evaluation of offers.
- (7) "Deficiency" is defined as either a failure to meet a stated requirement or a combination of weaknesses in an offer that increases the risk of unsuccessful contract performance.
- (8) "Emergency situations" are defined as circumstances that endanger lives, property, or the continuation of a vital program, as determined by the purchasing agency head, and that can be rectified only by immediate purchases or rental of goods or services.
- (9) "General delegation" is defined as the authority delegated to the purchasing agency for the procurement of information technology goods and services. The State CIO may issue general delegations and special delegations as provided in Rules 06B .1303 and 06B .1304. Information technology is defined in G.S. 147-33.81(2).
- (10) "Goods" are defined as information technology commodities including equipment, materials, or supplies.
- (11) "Negotiation" is defined as oral or written communications in a waived, limited, or open competitive procurement between the State and offeror(s) undertaken with the intent of allowing offerors 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. The State may reward technical solutions exceeding mandatory minimums with higher evaluations or negotiate with offerors for increased performance beyond mandatory minimums.

- (12) "Offer" is defined as a bid or proposal submitted in response to any solicitation document utilizing "Best Value" procurement methodology including Invitation for Bids (IFB), Request for Proposals (RFP), Request for Quotations (RFQ), negotiation, or other acquisition processes, as well as responses to solution-based solicitations and government-vendor partnerships.
- (13) "Packaged software," or "commercial off the shelf software" (COTS) is an information technology commodity and is defined as software used regularly for other than government purposes and is sold, licensed, or leased to the general public or commercial enterprises at a vendor's catalog prices.
- (14) "Pressing need" is defined as a need arising from unforeseen causes including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, and which can be satisfied only by immediate purchase (or rental) of equipment, supplies, materials, or contractual services.
- (15) "Price" is defined as the amount paid by the State to a vendor for a good or service.
- (16) "Procurement" is defined as the process of acquiring goods or services.
- (17) "Progressive award" is defined as an award of portions of a definite quantity requirement to more than one contractor. 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 the awards to more than one offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.
- (18) "Purchasing agency," or purchaser, is defined as the agency that issues the purchase order and thereby awards a contract.
- (19) "Responsible offeror" is defined as an offeror who demonstrates in its offer that it has the capability to perform fully the requirements of the solicitation.
- (20) "Responsive offer" is defined as an offer that conforms to the solicitation in all material respects.
- (21) "Sealed offer" is defined as an offer that remains unopened until the public opening time stated in the solicitation. Offers are typically submitted sealed to meet this requirement, but electronic submission is permitted if the purchasing agency has the capability to maintain the confidentiality of the offer until the scheduled public opening time.
- (22) "Service" is defined as any work performed to meet any demand or need for information technology requiring specialized knowledge, experience, expertise, professional qualifications, or similar capabilities for any aspect of information technology. This includes performance, review, analysis, development, integration, installation, or advice in formulating or implementing improvements in programs or services.
- (23) "Small purchase" is defined as the purchase of goods and services where the expenditure of public funds is within the purchasing agency's delegated authority.
- (24) "Solicitation document" is defined as a written or electronic Invitation for Bid (IFB), Request for Quote (RFQ), Request for Proposal (RFP) or Request for Information (RFI) document or other such documents approved under Rule 06B .0201 expressly used to solicit, invite offers, or request information regarding the acquisition of goods and services.
- (25) "State Chief Information Officer" (State CIO) is the person appointed to manage and administer the Office of Information Technology Services (ITS), and as used herein shall include the State CIO or the State CIO's designee.
- (26) "State CIO approval, limitation or determination," as used herein, is the judgment applied to the particular factual basis for the procurement decision under the rule or rules, utilizing the knowledge and qualifications of the office, the needs of the State, and information provided by the agencies involved.
- (27) "Tabulation" is defined as a list of offeror(s) submitting offer(s) in response to a particular solicitation.
- (28) "Total cost of ownership" is defined as a summation of all purchase, operating, and related costs for the projected lifetime of a good or a service.
- (29) "Weakness" is defined as a flaw in the offer that increases the risk of unsuccessful contract performance.

*History Note:* Authority G.S. 143-135.9; 147-33.82; 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06A .0103 BENCHMARK AND THE BOARD OF AWARDS**

*History Note:* Authority G.S. 143-52.1; 147-33.76(b1); 147-33.101(a);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013; March 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule Expired May 1, 2015.

#### **09 NCAC 06A .0104 RIGHT TO PETITION**

(a) Any person submitting a petition requesting the adoption, amendment, or repeal of a rule under this Chapter shall address the petition to the Rules Coordinator, Attn: DIT Legal Services, Mail Service Center 4101, Raleigh, North Carolina 27699-4101. Alternatively, a petition can also be emailed to DITrulesrequests@nc.gov.

(b) For petitions to adopt or amend a rule, the petition shall contain the following:

- (1) a draft of the proposed rule or amendment;
- (2) a statement of the effect of the requested rule change; and
- (3) the name and address of the petitioner.

(c) The petition may also contain the following:

- (1) the reason for the proposal;
- (2) the effect of the new rule on existing rules; or
- (3) any data supporting the rule proposal.

*History Note:* Authority G.S. 143B-1321(a)(16); 116E-4(b);  
Eff. January 1, 2021.

### **SUBCHAPTER 06B – PROCUREMENT REQUESTS**

#### **SECTION .0100 - REQUISITIONING**

#### **09 NCAC 06B .0101 AGENCY REQUESTS FOR AUTHORIZATION**

(a) The purchasing agency shall request authorization for procurement action exceeding its delegated authority from the State CIO by means of electronic or written requests, except in cases where a purchase is allowed by rule or other authority (e.g., emergency situations).

(b) Verbal requests from a purchasing agency for authorization of procurement action exceeding delegated authority may be accepted by ITS in emergency situations. Electronic or written confirmation from the purchasing agency must follow any such request.

*History Note:* Authority G.S. 147-33.76(b1); 147-33.95(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .0102 VERBAL REQUESTS**

*History Note:* Authority G.S. 147-33.76(b1); 147-33.95(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Repealed Eff. September 1, 2013.

### **09 NCAC 06B .0103 CONFIDENTIALITY OF SOLICITATION DOCUMENTS**

(a) In order to preserve fairness and encourage competitiveness, all information and documentation in whatever form, (e.g., electronic, written, and verbal forms) relative to the development of a solicitation for a proposed procurement shall be withheld from public inspection until award from that solicitation, unless the purchasing agency abandons or cancels the solicitation and indicates in its procurement records that it does not intend to rebid the solicitation or continue the procurement action.

(b) The purchasing agency may release such portions of the material as it deems necessary in order to develop a solicitation under Rule .0201 of this Subchapter or to debrief certain vendors as provided in Rule .0405 of this Subchapter.

*History Note:* Authority G.S. 147-33.76(b1); 147-33.95(a);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

## **SECTION .0200 - SPECIFICATIONS**

### **09 NCAC 06B .0201 DEVELOPMENT OF IT SOLICITATION DOCUMENTS AND SPECIFICATIONS**

(a) There shall be one or more types of IT solicitation documents that include specifications established by the State CIO or any other agency as statutorily authorized.

(b) The State CIO shall establish, develop, and maintain IT solicitation documents and specifications that are current and intended for general or repeated use and publish these forms on its website or other locations available to the purchasing agency (also see 09 NCAC 06B .0302).

(c) Other types of solicitation specifications that manage specific business needs may be originated by the purchasing agency and either approved or modified as necessary by ITS to manage the State's information technology effectively. A purchasing agency submitting other types of specifications or solicitations must demonstrate how such specifications or solicitations meets its respective business needs and whether other information technologies are commercially available to satisfy those needs.

*History Note:* Authority G.S. 147-33.76(b1); 147-33.95(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .0202 NEED**

The State CIO may inquire into the need for and level of quality of goods or services requested by a purchasing agency in its solicitation document. After consultation with the purchasing agency, the State CIO may authorize or modify the level of specification to manage overall direction of the State's information technology programs or services, or to comply with 09 NCAC 06B .0301, Procurement Procedures, or other rules.

*History Note:* Authority G.S. 147-33.76(b1); 147-33.95(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .0203 DEVELOPMENT OF SPECIFICATIONS**

*History Note:* Authority G.S. 147-33.95(b); 147-33.103(b);

*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Repealed Eff. September 1, 2013.*

**09 NCAC 06B .0204 ARTICLES FOR SPECIAL PURPOSES**

Where articles are to be used:

- (1) for educational or training purposes;
- (2) by persons with disabilities;
- (3) for test and evaluation or research purposes; or
- (4) for any other special purpose deemed necessary by the State CIO, consideration may be given to the suitability of such articles in the preparation of procurement documents, including solicitation specifications, evaluation of offers, requests for limited or waiver of competition, and the final award of contracts. The State CIO shall consult with the purchasing agency prior to making modification of any information or recommendation submitted by that agency.

*History Note: Authority G.S. 147-33.76(b1); 147-33.95(b);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**09 NCAC 06B .0205 SUBMISSION FOR ADOPTION**  
**09 NCAC 06B .0206 COPIES OF SPECIFICATIONS**  
**09 NCAC 06B .0207 CONFIDENTIALITY**

*History Note: Authority G.S. 147-33.95(b); 147-33.103(b);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Repealed Eff. September 1, 2013.*

**SECTION .0300 – PROCUREMENT AUTHORIZATION AND PROCEDURES**

**09 NCAC 06B .0301 PROCUREMENT PROCEDURES**

(a) The procurement process of requesting or inviting an offer(s) shall be managed by the purchasing agency, including use of standard solicitation document language and terms and conditions established by the State (Rule .0201 of this Subchapter). If an emergency situation or pressing need exists, the procurement process requesting or inviting an offer(s) shall also be managed by the purchasing agency, including the standard terms and conditions issued by the State CIO, unless circumstances prohibit their use. The standard solicitation documents are located at <http://it.nc.gov/it-procurement-forms-and-templates>.

(b) All information technology purchases involving the expenditure of state funds by the purchasing agency shall be competitively bid in conformity with the "Best Value" information technology procurement requirements in G.S. 143-135.9 and Rule .0302 of this Section. Exemptions may be granted by the State CIO where limited competition, waiver of competition (See Rule .0901 of this Subchapter), special delegation (see Rules .1303 and .1304 of this Section), exemption, or an emergency purchase is permitted by rule. Purchasing agency procurements not included in a statewide term, convenience, enterprise contract, or master agreement established by the State CIO shall comply with the applicable general delegations and procedures (Rule .1304 of this Subchapter).

(c) The agency head, or designee, shall set forth in writing procedures for making purchases under the agency's general delegation (Rule .1304 of this Subchapter). For purchases where the total requirements for goods and services involve an expenditure of state funds that does not exceed the purchasing agency's general delegation established by the State CIO, offers in conformity with G.S. 143-135.9 shall be solicited as follows:

- (1) The purchasing agency may advertise solicitations for offers to provide small purchases through the State's designated IT procurement website(s) or by an alternate method of advertising, as may be approved by the State CIO in accordance with Rule .0314 of this Section;
- (2) The purchasing agency shall award contracts for purchases.

(d) For purchases governed by statute, where the total requirements for goods and services involve an expenditure of State funds that exceeds the purchasing agency's general or special delegation established by the State CIO, offers in conformity with G.S. 143-135.9 shall be solicited as follows to encourage competition:

- (1) The purchasing agency shall issue documents soliciting, requesting or inviting offers, as published by DIT;
- (2) The purchasing agency shall include in solicitation documents standard language, including general or standard terms and conditions for technology purchases as published by DIT and in conformance with Rule .0316 of this Section. If additional terms and conditions are used, they shall not conflict with standard terms and conditions published pursuant to 09 NCAC 06A .0101 unless prior written approval is obtained under Rule .0201 of this Subchapter; and
- (3) The purchasing agency may also request from the State CIO, known vendor sources amenable to competing for award of various State procurements.
- (4) For purchases exceeding an agency's general delegation, the purchasing agency shall submit drafts of solicitation documents to the State CIO for approval prior to proceeding with the procurement process. The State CIO shall then engage in a review and approval process of such solicitation documents to ensure that proposed and actual IT procurements are advantageous to the State:
  - (A) After completing review and evaluation of offers received, the purchasing agency may prepare and submit to the State CIO for review a draft recommendation for award;
  - (B) After completing review and evaluation of offers received, the purchasing agency shall submit to the State CIO a written, final recommendation for award, including a copy of all offers received and all supporting documentation with its recommendation;
  - (C) The State CIO shall then review and either approve the recommendation or direct modification to the recommended procurement action as deemed in the best interest of the State or as directed by the State CIO, (e.g., award, cancellation, rebid, negotiation with known sources of supply, etc.);
  - (D) The State CIO shall notify the purchasing agency of any decision regarding that recommended procurement action; and
  - (E) Upon receipt of the State CIO notification, the purchasing agency shall proceed with the respective procurement action as directed.
- (5) A contract term shall not be awarded for more than three years including extensions and renewals, without the prior approval of the State CIO, based on a determination that it is advantageous to the State pursuant to best value procurement.

*History Note: Authority G.S. 143-135.9; 143B-1322(c); 143B-1350; 143B-1351(a);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Readopted Eff. March 1, 2016.*

#### **09 NCAC 06B .0302 METHODS OF SOURCE SELECTION**

Purchases governed by general delegation or statute shall be solicited, and offers evaluated, in accordance with the following best value methods:

- (1) The purchasing agency shall use the following steps for best value procurements;
  - (a) The purchasing agency determines the appropriate best value bidding method through development of one of the solicitations set forth in Sub-item (1)(b) of this Rule;
  - (b) The following types of solicitations are available from the State CIO or other types as may be approved by the State CIO pursuant to applicable laws and regulations:
    - (i) Requests for Information (RFI), used for gathering information to prepare a solicitation for offers;
    - (ii) Invitations for Bid (IFB), used when the best value recommendation for award is based on the lowest priced or highest qualified and technically acceptable selection method;
    - (iii) Requests for Quotation are used to contract with a single vendor or a limited group of vendors for purchases of specific goods and services or small purchases of goods, or pursuant to a waiver of competition that satisfies Rule .0901 of this Subchapter;

- (iv) Requests for Proposal (RFP), used for purchases when the State needs to solicit solutions-based offers, where negotiations with one or more vendors may be needed, or when the best value recommendation for award is based on ranking all offers and will not be based solely on the lowest priced-technically acceptable source;
- (v) One-Step solicitation, used when both the technical step one offer and price step two offer are submitted at the same time;
- (vi) Two-Step solicitation, used when the technical step one offer and price step two offer are submitted and evaluated separately;
- (c) The purchasing agency shall develop, advertise, and publish its solicitation for offers in accordance with the rules of this Subchapter;
- (d) The purchasing agency shall hold any scheduled conferences or site visits in accordance with standard solicitation document language established by the State CIO;
- (e) The purchasing agency shall receive offers in response to its solicitation and it shall then conduct a public bid opening and prepare a tabulation of all offers received. For solicitations that allow for negotiation after receipt of offers, only the names of offerors shall be disclosed at the public bid opening or on the tabulation of offers received;
- (f) The purchasing agency's evaluation committee shall evaluate offers in accordance with the stated solicitation selection method and evaluation criteria. For solicitations that include a best value ranking process, the purchasing agency shall rank offers by using any consistent rating or scoring methodology, which may include adjectival, numerical, or ordinal rankings. The purchasing agency's evaluation shall document relative strengths, deficiencies, weaknesses, and risks supporting its award recommendation. Best-Value evaluation shall include evaluating quality factors such as:
  - (i) State's total cost of ownership, meaning summation of the State's total cost for acquiring, operating, maintaining, and supporting a product or service over its projected lifetime to include competitive price data; evaluation of the offeror's cost for actual and anticipated components comprising its quotation, as applicable; and value-added conditions or additional services included in the offer;
  - (ii) Technical merit of the offer including as applicable, consideration for consistency and compatibility of the proposed solution with the State's strategic program direction; maximum facilitation of data exchange or systems integration; effectiveness of business solution and approach to solicitation's specific purpose or objective; delivery and implementation schedules; and guarantees, warranties, and return policies; and
  - (iii) Probability of the offeror performing the work as stated in the solicitation on time, in a manner that accomplishes the stated intent and business objectives, and that maintains compliance with industry standards including, as applicable, consideration of the offeror's financial stability; program or industry experience; past performance with the State; expertise with similar projects, solutions, or technologies; its proven development methodologies and tools, innovative use of technologies; or key personnel and depth of additional resources, compared to scope and intent of business need stated in the solicitation; etc.;
- (g) The purchasing agency may communicate with offerors after receipt of offers and in accordance with instructions, procedures and terms set forth in the solicitation as well as those procedures appropriate to the designated method of source selection. If negotiation is permitted in the solicitation, the purchasing agency may also allow offerors to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer;
- (h) The purchasing agency evaluation committee shall determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation. The purchasing agency evaluation committee shall rank all responsive and responsible offerors from most advantageous to least advantageous to the State, and document such in its final award recommendation;

- (i) Award must be made to the responsive and responsible offeror whose offer is determined to be the most advantageous and best value to the State, using all evaluation criteria set forth in the solicitation (e.g., if the lowest price or highest qualified technically acceptable method is designated in the solicitation, then award must be made to the responsive and responsible offeror with the lowest price or highest qualified technically accepted method.)
- (2) A trade off method of source selection may be utilized when it is in the best interest of the State to award a contract using a comparative evaluation of technical merit and costs. For a solicitation that designates the trade-off source selection method, the following shall apply:
  - (a) All factors that will affect the contract award recommendation and the relative importance of each shall be stated as evaluation criteria in the published solicitation;
  - (b) The solicitation shall state the importance or numerical weight of all evaluation criteria including consideration of price and total cost of ownership;
  - (c) Offers shall be ranked according to the evaluation criteria stated in the solicitation. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors. For example, an offer with the lowest price when compared to other offers would receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced;
  - (d) Clarifications are permitted;
  - (e) If permitted in the solicitation terms, the purchasing agency may also use negotiations, or other communications, after receipt of an offer.
- (3) The lowest priced or highest qualified technically acceptable source selection method may be used when best value is expected to result from selection of the highest qualified or technically acceptable offer with the lowest evaluated price. When this method is designated in a solicitation, the following shall apply:
  - (a) The factors that establish the requirements for technical acceptability shall be set forth in the solicitation's evaluation criteria. Evaluation criteria shall specify that the award will be made on the basis of the lowest evaluated price or most highly qualified technically acceptable of those offers that meet or exceed the acceptability requirements for non-price factors;
  - (b) Trade-offs between price and non-price factors are not permitted;
  - (c) Proposals are evaluated for acceptability but are not ranked using the non-price factors.
  - (d) Clarifications are permitted;
  - (e) Negotiations are permitted with this selection method for purchases over the purchasing agency's general delegation, when so specified in the published solicitation. The purchasing agency may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, or terms and conditions.
- (4) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the state and are approved for use by the State CIO.

*History Note: Authority G.S. 143-135.9; 143B-1322(c); 143B-1343; 143B-1350; 143B-1355; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. September 1, 2013; Readopted Eff. March 1, 2016.*

### **09 NCAC 06B .0303 ELECTRONIC OFFERS**

The purchasing agency may accept offers submitted electronically in response to solicitation documents if such offers comply with these Rules and applicable laws. The purchasing agency's use of digital or electronic signatures must be consistent with applicable statutes and rules. The purchasing agency must authorize but may limit the use of electronic methods of conducting a procurement based on the State's best interests, as determined by the purchasing agency and approved by the State CIO if such methods comply with these Rules and information technology security policies established pursuant to G.S. 147-33.110 et seq.



*History Note:* Authority G.S. 66-58.5; 66-325; 147-33.95;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .0304 RECALL OF OFFERS**

An offeror may recall its offer by delivering a written request to withdraw prior to acceptance of any offer related to that procurement.

*History Note:* Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .0305 PUBLIC OPENING**

- (a) The purchasing agency shall publicly open and tabulate all offers at the time, date and place identified in the solicitation. The tabulation shall be made public at the time it is created unless otherwise provided by these Rules.
- (b) At the time of opening, only the names of offerors and the goods or services offered shall be tabulated when negotiation after receipt of offers is authorized by the solicitation terms, unless otherwise provided by these Rules. The price offer(s) shall become available for public inspection at the time of the award.
- (c) There shall be at least two purchasing agency employees present at the opening when "sealed offers" are required, and at least one purchasing agency employee present when electronic offers are required.

*History Note:* Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .0306 LATE OFFERS**

Offers not received by the due date and time as specified in the solicitation shall not be considered.

*History Note:* Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .0307 CLERICAL ERRORS AND CLARIFICATIONS**

When the purchasing agency determines that an offer appears to contain an obvious error or where a clerical error is suspected, the purchasing agency may investigate or act upon the circumstances. Any action taken shall not prejudice the rights of the public or other offerors. Where offers are submitted substantially in accordance with the solicitation terms but are not clear as to intent or some particular fact or where there are other ambiguities, the purchasing agency may seek and accept clarifications or may open communications as permitted by Rule .0302 of this Subchapter. Clarifications shall not be utilized to cure material deficiencies or to negotiate.

*History Note:* Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**09 NCAC 06B .0308      EXTENSION OF OFFER VALIDITY**

When the purchasing agency determines it is in the State's best interest, the purchasing agency may request that offerors extend the date through which the offers are valid. Requests by the State for time extensions of offer validity will not result in change to the prices as stated in the original offer unless so specified in the request to extend or subsequently agreed to by the purchasing agency in writing.

*History Note:      Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**09 NCAC 06B .0309      EVALUATION**

- (a) In determining the award of contracts, the purchasing agency shall consider and evaluate responsive and responsible offers as provided by statute and applicable rules.
- (b) Only persons in the purchasing agency who are assigned to evaluate the offers and accompanying information, or who are otherwise assigned to participate in the procurement process, or others whose participation may be determined necessary on the basis of subject matter expertise by the purchasing agency or State CIO in the procurement process shall possess offers, including any information submitted with the offers or any information related to evaluation of offers, for the purpose of concluding the award process.
- (c) Clarification of offers or negotiation(s) with offerors, if desired, shall be requested by the purchasing agency in writing. An offeror's further participation in the evaluation process is not permitted except as approved by the State CIO for the purpose of concluding the evaluation or the award process.
- (d) After award of the contract or when the need for the good or service is canceled, the complete procurement file (see Rule .1402 of this Subchapter) shall be available for public inspection except as set forth in Rule .1001 of this Subchapter and except as provided by law; provided however, that when a solicitation document is canceled and the purchasing agency intends to reissue the solicitation, information that is confidential under Rule .0103 of this Subchapter and offers received prior to cancellation shall be withheld from public inspection until the re-issued solicitation results in a contract or termination of the procurement.

*History Note:      Authority G.S. 147-33.76(b1); 147-33.95(a);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**09 NCAC 06B .0310      NOTIFICATION OF AWARD**

**09 NCAC 06B .0311      LACK OF COMPETITION**

**09 NCAC 06B .0312      SOLICITATION DOCUMENTS**

*History Note:      Authority G.S. 147-33.100; 147-33.103(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Repealed Eff. September 1, 2013.*

**09 NCAC 06B .0313      DIVISION OF COMMODITIES AND SERVICE NEEDS**

Commodities or service needs shall not be divided to keep the expenditure under the purchasing agency's delegation to avoid following the appropriate procurement processes and applicable rules. In the case of similar and related items and groups of items, the dollar limits of delegated authority apply to the total cost of ownership rather than the cost of any single item.

*History Note: Authority G.S. 147-135.9; 147-33.76(b1); 147-33.101; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. September 1, 2013; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**09 NCAC 06B .0314 ADVERTISEMENT AND NOTICE**

(a) Requirement to Advertise, Publish and Notify:

- (1) Solicitations: To maintain transparency and encourage competition for award of business, the purchasing agency shall advertise and publish solicitations for purchases exceeding the general delegation as established by the State CIO for no less than 10 calendar days, unless the State CIO waives the requirement for advertising;
- (2) Addenda or Changes: Any changes or addenda to a solicitation must be advertised and published with enough time to allow for reasonable consideration and possible incorporation of any changes into potentially competing vendors' response offers. Any changes or addenda to a solicitation must be advertised and published for no less than two business days from the scheduled offer due and opening date, unless the State CIO waives the requirement to advertise and publish changes or addenda to a solicitation;
- (3) Notices of Award: To maintain transparency and promote future competitiveness, the notice of award shall be advertised for no less than 30 calendar days, unless the State CIO waives the requirement to advertise, publish, and issue a notice of award;
- (4) Waiver of requirement to advertise and notify must fall under one of the following conditions in order for the State CIO to waive the requirement:
  - (A) Acquisition of commodities or services that are subject to rapid price fluctuations or immediate acceptance;
  - (B) Emergency situations or pressing needs;
  - (C) Acquisition of goods or services needed for any ongoing job, task, or project;
  - (D) Acquisition of goods or services where performance or price competition is not available;
  - (E) Any determination that no useful purpose would be served by requiring such; or
  - (F) Exceptions identified under Rule .1303 of this Subchapter.

(b) Required method for Advertising, Publishing, and Notifying: To maintain transparency and promote competitiveness:

- (1) Solicitations:
  - (A) The purchasing agency shall electronically advertise and continually publish solicitations via posting to the State's designated IT procurement website, unless a waiver of advertisement method is granted by the State CIO pursuant to waiver of competition under Rule .0901 of this Subchapter, for cooperative agreements under Rule .1006 of this Subchapter, or direct negotiation with vendors as permitted by Rule .0316 of this Subchapter;
  - (B) This Rule does not preclude a purchasing agency from soliciting offers by additional direct mailings or additional advertisement;
  - (C) Required advertisement and publication data shall include all relevant information pertaining to contacts and due dates, and the complete solicitation document and any attachments (i.e., specifications; requirements; terms and conditions; price model; etc.);
  - (D) If a purchasing agency head (or his/her designee) determines that it is not feasible to electronically transmit (due to file size, etc.) a particular solicitation document or attachment(s) through the required method (e.g., a procurement library, architecture reference documents, price model forms, etc.), then the purchasing agency must still electronically transmit a summary notice or advertisement through the designated IT procurement website. In such instance, the advertisement shall include the required information with the addition of a brief explanation for why the entire solicitation is not included, and shall instruct anyone inquiring about the solicitation to contact the purchasing agency for a copy of the actual solicitation document and any respective attachments.
- (2) The required advertisement information shall include:

- (A) Purchasing agency name and website reference, and designated IT procurement website reference;
  - (B) Assigned purchasing agency contact's name, telephone number, and electronic mail address;
  - (C) Location address for delivery/receipt of offers;
  - (D) Solicitation identification number or reference;
  - (E) Title (i.e., scope or short description of the good or service solicited);
  - (F) Due date and time for solicitation clarifications or questions;
  - (G) Date, time, and location for opening of offers received;
  - (H) In addition to the specifications, offer terms and conditions, award terms and conditions, etc., the solicitation document must furnish the due date and time; method of request, e.g., regular mail, or electronically via e-mail or facsimile, etc.; and an address for receipt of requests for solicitation clarifications or questions; and
  - (I) Conference or site visit date, time and location; assigned meeting contact person and that contact person's telephone number and electronic mail address; and other relevant information relating to attendance. If no conference or site visit is scheduled, then this shall be stated in the advertisement and the solicitation document.
- (3) Addenda or Changes: The same advertisement method that is approved and followed for publishing a solicitation document must also be followed for publishing any respective addenda or changes to the solicitation and resulting notice of award, unless an exception is permitted Subparagraph (5) of this Paragraph.
- (4) Notices of Award:
- (A) To the extent practicable, the purchasing agency shall simultaneously issue an individual notice of award to all offerors responding to the respective solicitation and shall publish the notice of award via the approved method of advertisement for that solicitation and addendum Paragraph (a) of this Rule;
  - (B) Notice of Award shall summarize the resulting contract award information including identification of the advertised solicitation; the awardee name and location; scope, start and end dates; authorized value through original end date; and renewal options.
- (5) Exceptions to Required Method:
- (A) When the purchasing agency (or its designee) deems there is a valid reason not to publish via the State's designated IT procurement website, the purchasing agency may request from DIT a waiver of the required method for advertising, publishing, and notifying;
  - (B) Valid reasons to request a waiver to the required method include computer failure and networking difficulties;
  - (C) The purchasing agency's request for waiver of required method shall include the rationale for requesting, a description of a proposed alternate method, length of time proposed for advertising, and explanation if the solicitation document and any attachments or addenda will not be included or published with the advertisement;
  - (D) The purchasing agency's proposed alternate method to the State's designated IT procurement website must be via other medium widely distributed or commonly available to the public, such as publishing in a newspaper, etc.;
  - (E) The rationale for requesting waiver of required advertising method, requested alternate method, and respective DIT approval, shall be documented and become part of the procurement file, open for public inspection after award.

*History Note: Authority G.S. 143B-1322; 143B-1350;  
 Temporary Adoption Eff. January 1, 2000;  
 Eff. August 1, 2000;  
 Amended Eff. September 1, 2013;  
 Readopted Eff. March 1, 2016.*

**09 NCAC 06B .0315 MANDATORY CONFERENCES/SITE VISITS**

(a) When a solicitation requires potential offerors to attend a mandatory conference or site visit, then the date, time, location, and other details relating to attendance shall be given in the solicitation document and in the advertisement.

(b) If only one potential offeror attends the mandatory conference or mandatory site visit, the conference or site visit may be conducted, but the purchasing agency shall endeavor to ascertain why only one potential offeror attended, and whether there is any competition available. If it is determined that competition is available, the purchasing agency may schedule another conference or site visit, if deemed to be to the advantage of the State. If it is determined that there is no competition available, then the procurement may be handled as a waiver of competition as permitted by Rule .0901 of this Subchapter.

(c) The purchasing agency shall document details of the conference or site visit as part of the official records required in Rule .1402 of this Subchapter.

(d) Any and all questions or clarifications by a potential offeror regarding a solicitation document shall be addressed to the purchasing agency contact so designated in the solicitation. Any and all revisions to the solicitation document shall be made only by published addendum from the purchasing agency.

*History Note: Authority G.S. 143B-1233(c); 143B-1350;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Readopted Eff. March 1, 2016.*

### **09 NCAC 06B .0316 NEGOTIATION**

(a) The purchasing agency shall conduct negotiations under its general delegation. Negotiations may also be conducted to establish contracts exceeding the purchasing agency's delegation, if the purchasing agency receives prior approval to negotiate from the State CIO as permitted by these Rules. Prior approval may be granted upon finding that the capabilities and subject matter knowledge of the agency, availability of knowledgeable personnel within the agency or DIT, use of non-state personnel, and costs of engaging additional resources demonstrate that the agency's negotiation will be more responsive, efficient, and cost-effective consistent with the requirements of best value procurement.

(b) If a purchasing agency deems negotiations to be advantageous to the State after receiving offers and then determines that soliciting offers again would serve no purpose, the purchasing agency may then conduct negotiations with sources of supply that appear to be capable of satisfying the purchasing agency's business needs. The purchasing agency's negotiation documentation shall include identification of issues or subjects of negotiation, the agency's risk assessment therefor, trade off principles as permitted by G.S. 143-135.9, and other matters directly arising from the solicitation or offer. Negotiations shall be finalized in writing and shall include standard solicitation document language and terms and conditions issued by DIT, or such terms as may be established pursuant to Paragraphs (c) or (d) of this Rule. If the purchasing agency's negotiations are conducted with only one offeror, or if only one offeror responds to a request to negotiate, then the purchasing agency shall document the reasons for the lack of competition as part of the procurement record under Rule .1402 of this Subchapter.

(c) Purchasing agency negotiations may be conducted under Section .0900 of this Subchapter when conditions merit a limited or waiver of competition or in other situations that are advantageous to the State as determined by the State CIO.

(d) Modifications, waivers, or any other changes or amendments to a solicitation, including language and terms and conditions issued by the State CIO, made in the course of negotiations must be accompanied by:

- (1) Approval of the negotiating agency;
- (2) Requested approval from DIT;
- (3) Appropriate evaluation documentation reflecting trade-offs between price and non-price factors; and
- (4) Such other documentation as the State CIO may require to conform with Rule .1402 of this Subchapter.

(e) Negotiations shall not materially alter the intent or scope of the original solicitation document.

*History Note: Authority G.S. 143B-1322(c); 143B-1340(f); 143B-1343; 143B-1350;  
Eff. September 1, 2013;  
Readopted Eff. March 1, 2016.*

### **SECTION .0400 – REJECTION OF OFFERS**

#### **09 NCAC 06B .0401 REJECTION OF OFFERS**

- (a) Bases for rejection of an offer shall include, late offers; the purchasing agency's determination that the offer is unsatisfactory as to quantity, quality, delivery, price or service offered; the offeror's failure to comply with the intent or conditions of the solicitation document; the lack of competitiveness due to collusion or due to the knowledge that reasonably available competition was not received; error(s) in specifications or indication that revision(s) would be to the State's advantage; cancellation of, or changes in, the intended project or other determination that the commodity or service is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the lowest priced or highest qualified technically acceptable offer or the best value offer; or any determination that rejection would be in the best interest of the State.
- (b) Unsigned offers shall be rejected by the purchasing agency.
- (c) The purchasing agency shall reject late offers and shall not consider modification of offers or withdrawals of offers unless these would have been timely except for the action or inaction of the agency personnel serving the procurement process.

*History Note:* Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

**09 NCAC 06B .0402 PUBLIC RECORD**  
**09 NCAC 06B .0403 NEGOTIATION**

*History Note:* Authority G.S. 147-33.103(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Repealed Eff. September 1, 2013.

**09 NCAC 06B .0404 NOTICE OF REJECTION**

- (a) The purchasing agency shall not be required to provide notice of rejection of offers prior to approval and award of a contract.
- (b) When a competitive range is established by the purchasing agency's evaluation committee, and offers are not included in such range, the purchasing agency may provide notice to an offeror that its offer is excluded, consistent with this Rule and as established in the solicitation.
- (c) The purchasing agency may grant requests for debriefings as provided herein, consistent with this Rule and as may be established in solicitation documents.

*History Note:* Authority G.S. 147-33.76(b1);  
Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

**09 NCAC 06B .0405 DEBRIEFING OFFERORS**

- (a) Pre- or post-award-debriefings of successful and unsuccessful offerors may be completed by personal meeting or by written or electronic communication (e.g., telephone, email, etc.).
- (b) Debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, debriefing shall not reveal any information not then available for public inspection or properly designated as confidential in accordance with Rule .1001 of this Subchapter, the N.C. Public Records Law, or any other applicable laws.
- (c) If debriefing is authorized by terms of the solicitation:
  - (1) The purchasing agency shall implement the debriefing process as follows;
    - (A) Include an official summary of the debriefing in the record, per Rule .1402 of this Subchapter, by the protest-period due-date;
    - (B) Schedule a debriefing within five business days after receipt of an offeror's written request for a debriefing;

- (C) If requested, grant at its discretion, rejected offeror(s) a delayed debriefing for any good cause shown;
- (2) Accommodation of a competing offeror request for delayed debriefing does not extend the due dates for filing protests.
- (3) All competing offerors may request a debriefing by submission of a written request to the purchasing agency not more than three business days from notice of award date.
- (4) Offeror may, if notified that it is not included in the competitive range:
  - (A) Request a pre-award debriefing by delivering such request to the purchasing agency not more than three business days after the notice of rejection date; or
  - (B) Request a post-award debriefing by delivering a request for such not more than three business days after the later of the notice of rejection date or notice of the award date.
- (5) Debriefing shall include review of the committee's evaluation of vendor's proposal/offer per terms of the solicitation, including:
  - (A) Any weaknesses, deficiencies, or risks to the purchasing agency, identified in evaluation of the offeror's proposal;
  - (B) Evaluated cost or price (including unit prices) and the State's total cost of ownership;
  - (C) Evaluated vendor responsibility to proposal, including past performance information, etc., as applicable;
  - (D) Evaluated vendor responsiveness and the technical merit of its proposal;
  - (E) Responses to relevant questions from the vendor about whether source selection procedures, applicable regulations, or other applicable authorities, were followed.
- (6) If debriefing is post-award, the information must include the items listed in Subparagraph (c)(4) of this Rule and may also include:
  - (A) Overall ranking of all offerors; and
  - (B) A summary of the evaluation and rationale for award to the successful offeror.

*History Note:* Authority G.S. 143B-1322(c); 143B-1350;  
 Eff. September 1, 2013;  
 Readopted Eff. March 1, 2016.

## **SECTION .0500 – INSPECTION AND TESTING**

### **09 NCAC 06B .0501 RESPONSIBILITY**

The purchasing agency shall inspect all materials, supplies, and equipment upon delivery to verify compliance with the contract requirements and specifications. The purchasing agency shall also be responsible for verifying that services as provided comply with the terms of the contract.

*History Note:* Authority G.S. 147-33.76(b1);  
 Temporary Adoption Eff. January 1, 2000;  
 Eff. August 1, 2000;  
 Amended Eff. September 1, 2013;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .0502 INSPECTION**

The State CIO may inspect any items, or deliverables or monitor performance to ensure that contractor compliance with contract specifications and terms are met. The purchasing agency must ensure that goods or services purchased comply with applicable codes, statutes, local ordinances, policies and safety requirements.

*History Note:* Authority G.S. 147-33.76(b1);  
 Temporary Adoption Eff. January 1, 2000;  
 Eff. August 1, 2000;  
 Amended Eff. September 1, 2013;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .0503      SAMPLES**

When samples are required in response to a solicitation document, the purchasing agency may test those samples or have them tested at other state or private sector testing facilities. Samples shall not be sent to laboratories outside an agency unless it is determined by an agency that these facilities have the capability, time, and expertise needed.

*History Note:      Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

### **09 NCAC 06B .0504      MODIFICATIONS TO CONTRACT SPECIFICATIONS**

When the purchasing agency determines it to be in the State's best interest, it may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration. If an increase in cost results in the total contract value being more than the purchasing agency's delegation, then the purchasing agency shall obtain prior written approval for a special delegation from ITS pursuant to Rule 06B .1304, regardless of what agency initially awarded the contract.

*History Note:      Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

### **09 NCAC 06B .0505      REPORT OF DISCREPANCY**

Where delivered goods or services fail to meet the specifications or contract requirements, the discrepancy shall be resolved by the purchasing agency.

*History Note:      Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

## **SECTION .0600 – GUARANTEES AND WARRANTIES**

### **09 NCAC 06B .0601      ENFORCEMENT**

The purchasing agency shall enforce the contractual guarantee or warranty applying to the goods or services purchased.

*History Note:      Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

### **09 NCAC 06B .0602      REPORT TO ITS**

The purchasing agency shall report to the State CIO any difficulties in obtaining satisfactory performance including service as provided in a guarantee or warranty.

*History Note:      Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;*



*Eff. August 1, 2000;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**09 NCAC 06B .0603      RESPONSIBILITY OF PURCHASING AGENCY**

The purchasing agency must notify the vendor when latent or other defects are discovered. In the event the vendor fails to remedy the condition reported, the purchasing agency shall report the matter to ITS.

*History Note:      Authority G.S. 147-33.76(b1);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**SECTION .0700 - CONTRACTS**

**09 NCAC 06B .0701      CONTRACTS ESTABLISHED BY DIT**

(a) In determining whether a good or service will be included in an agency specific contract, the agency and the State CIO shall consider available statewide term and convenience contracts and such factors as volume, whether the good or service is necessary for an IT project, nature of the good or service, repetitiveness of use, relative stability of prices, and delivery or transportation costs.

(b) Term Contracts.

- (1) A "term contract" is a binding agreement between the purchaser and seller to buy and sell IT goods or services for a specific period of time at prices established by contract;
- (2) A statewide term contract consolidates normal, anticipated requirements of all State purchasing agencies into one agreement and shall be awarded by the State CIO. No agency may purchase IT goods or services included in a statewide term contract from any other source unless authorized by the State CIO;
- (3) If an agency documents to the State CIO a need to establish an agency specific contract in lieu of a statewide term contract or an expenditure not covered by a statewide term contract for which the expenditure during the life of the contract exceeds the agency's general delegation, the purchasing agency, with the State CIO's approval, may issue a solicitation document for the purpose of awarding an agency specific contract for use by that agency in accordance with the determining factors set forth in this Rule.

(c) Convenience Contracts.

- (1) A statewide IT "convenience contract" is an agreement awarded by the State CIO for an indefinite quantity of goods or services that may be used by a State agency. Convenience contracts are not mandatory-use agreements;
- (2) If an agency elects not to purchase the goods or services it requires from an established convenience contract, then that agency must comply with Rule .0301 of this Subchapter.

(d) A "master IT agreement" is an agreement between a vendor and the State characterized by one or more of the following:

- (1) Goods or services are, or may be, procured from resellers, value added resellers (VARs), original equipment manufacturers (OEMs), or others who represent the master agreement vendor;
- (2) Goods or services are proprietary intellectual property of the master agreement vendor; and
- (3) Master agreements are established without competitive bidding.

(e) Master agreements may result in agency or statewide term or convenience contracts.

(f) Solicitations and vendor offers may modify terms of a master agreement if the State's best interests are served and if such is allowed via the terms of the solicitation.

(g) Master agreement terms and conditions may be negotiated pursuant to Rule .0316 of this Subchapter.

*History Note:      Authority G.S. 143B-1322(c); 143B-1350;*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*

*Amended Eff. September 1, 2013;*  
*Readopted Eff. March 1, 2016.*

**09 NCAC 06B .0702 DETERMINING FACTORS**

*History Note: Authority G.S. 147-33.76(b1);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Repealed Eff. September 1, 2013.*

**09 NCAC 06B .0703 EXTENSION OF CONTRACT TERMINATION DATES**

When in the best interest of the State, offerors may be requested to extend the scheduled termination dates of contracts. Such extensions shall not result in a change in the prices stated in the original contract unless agreed to by the agency in writing. Extensions that result in a cumulative contract value exceeding an agency's delegation must be submitted to ITS for special delegation approval pursuant to Rule .1303 of this Subchapter.

*History Note: Authority G.S. 147-33.76(b1);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**SECTION .0800 - PARTIAL AND MULTIPLE AWARDS**

**09 NCAC 06B .0801 USE**

- (a) Partial, progressive or multiple awards may be made when it is advantageous to the State.
- (b) Notwithstanding the necessity for awards to more than one supplier, such awards shall be limited to the number of suppliers deemed necessary to satisfy the intended requirements. Quantities shall not be divided among offerors on definite quantity requirements unless and except as provided in the solicitation and unless such division is determined to be in the best interest of the State.

*History Note: Authority G.S. 147-33.76(b1);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**SECTION 0900 – WAIVER OF COMPETITION**

**09 NCAC 06B .0901 CONDITIONS FOR LIMITED OR WAIVED COMPETITION**

(a) Under conditions listed in this Rule, and otherwise if deemed to be in the interest of the State by the State CIO, competition may be limited or waived where a factual basis demonstrates support of one or more of the conditions set forth in Paragraph (b) of this Rule. If the procurement is within a purchasing agency's general delegation, then the purchasing agency may waive competition in conformance with this Rule. If the procurement is greater than the agency's delegation, the agency shall submit a written request including facts supporting conditions set forth in Paragraph (b) of this Rule for limited or waived competition to the State CIO for approval.

- (b) Competition may be limited or waived under the following conditions:
- (1) competition is not available;
  - (2) a needed product or service is available from only one source of supply;
  - (3) emergency action is indicated;
  - (4) competition has been solicited but no responsive offers have been received;
  - (5) standardization or compatibility is the overriding consideration;
  - (6) a donation stipulates the source of supply;
  - (7) personal or particular professional services are required;

- (8) a product or service is needed for a person with disabilities and there are overriding considerations for its use;
- (9) additional products or services are needed to complete an ongoing job or task;
- (10) a particular product or service is desired for educational, training, experimental, developmental or research work;
- (11) equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
- (12) items are subject to rapid price fluctuation or immediate acceptance;
- (13) there is evidence of resale price maintenance or other control of prices or collusion on the part of persons or entities that thwarts normal competitive procedures unless otherwise prohibited by law;
- (14) a purchase is being made and a price is available from a previous contract;
- (15) the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); or
- (16) a used item is available on short notice and subject to prior sale.

*History Note:* Authority G.S. 143B-1322(c); 143B-1350;  
 Temporary Adoption Eff. January 1, 2000;  
 Eff. August 1, 2000;  
 Amended Eff. September 1, 2013;  
 Readopted Eff. March 1, 2016.

#### **09 NCAC 06B .0902 APPROVAL AND DOCUMENTATION**

Although competition may be limited or waived pursuant to Rule .0901 of this Subchapter, the use of competition is required wherever an exception is not approved. After a limitation or waiver of competition is approved as provided in Rule .0901(a) of this Subchapter, negotiations with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions, may be conducted.

*History Note:* Authority G.S. 147-33.76(b1);  
 Temporary Adoption Eff. January 1, 2000;  
 Eff. August 1, 2000;  
 Amended Eff. September 1, 2013;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **SECTION .1000 – MISCELLANEOUS PROVISIONS**

#### **09 NCAC 06B .1001 CONFIDENTIALITY**

- (a) The offeror may designate information as a trade secret pursuant to G.S. 132-1.2 and may otherwise designate information as confidential as provided by law, citing the applicable statute on which the claim of confidentiality is made (*e.g.*, offers and supporting documents meeting the criteria of North Carolina's Trade Secrets Protection Act requirements, *etc.*). Offerors shall identify each page containing confidential information in boldface at the top and bottom; *e.g.*, "CONFIDENTIAL". Price(s) presented in response to a solicitation shall not be deemed confidential.
- (b) To promote maximum competition and to protect the public competitive procedure from being used to obtain information that would normally not be available otherwise, the purchasing agency shall maintain the confidentiality of those portions of an offer properly designated as confidential.

*History Note:* Authority G.S. 132-1.2; 147-33.76(b1); 147-33.95(a);  
 Temporary Adoption Eff. January 1, 2000;  
 Eff. August 1, 2000;  
 Amended Eff. September 1, 2013;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .1002 PAYMENT PLANS**

Purchase contracts may provide for payment over a period of time. Such instances shall be justified in the procurement record, kept to a minimum and shall include approval from the agency head for payment provisions

when payments will be made over a period of time. Agency heads and governing boards of an agency shall ensure that the agency complies with statutory and State fiscal requirements.

*History Note: Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1003 CHANGE IN CORPORATE STRUCTURE OR ASSIGNMENT**

A vendor shall not assign a state contract without prior written approval from the purchasing agency. In cases where the vendor seeks to assign its contract prior to the State's written approval of an assignment, the vendor assignor shall affirm in writing to the State that the assignee is fully capable of performing all obligations of the vendor under the contract. In cases where vendors who have been awarded contracts are involved in corporate consolidations, acquisitions, or mergers, the purchasing agency may negotiate agreements for the transfer of contractual obligations and the continuance of contracts within the framework of the new corporate structures.

*History Note: Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1004 PURCHASING FROM OR THROUGH AGENCY EMPLOYEES**

Written approval of the State CIO is required before an agency purchases goods or services from or through an agency employee. In deciding whether to grant approval, the State CIO shall consider the type of item or service needed, the prevailing market conditions, whether competition is available, the cost involved, and the effects of doing business with the employee.

*History Note: Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1005 ANTICOMPETITIVE, DECEPTIVE, AND FRAUDULENT PRACTICES**

(a) A purchasing agency shall act to prevent the continuance of anticompetitive, deceptive, or fraudulent practices. Anticompetitive practices include actions involving offerors that restrain trade or commerce or eliminate competition.

(b) Anticompetitive, deceptive, or fraudulent practices may be evidenced by one or more of the following:

- (1) Conspiracy (in restraint of trade or commerce);
- (2) Combination bidding (in restraint of trade or commerce);
- (3) Price fixing (which may include reliance upon an industry price list);
- (4) Collusion;
- (5) Identical bidding;
- (6) Agreements to:
  - (A) Rotate offers;
  - (B) Share the profits with an offeror who is not the low offeror;
  - (C) Sublet work in advance of bidding as a means of preventing competition;
  - (D) Refrain from bidding;
  - (E) Submit prearranged offers;
  - (F) Submit complementary offers;
  - (G) Set up territories to restrict competition;

- (H) Alternate bidding; or
  - (I) Any other unlawful act in restraint of trade or commerce.
- (c) Agency actions to discourage or prevent the continuance of anticompetitive, deceptive, or fraudulent practices may include the following:
- (1) Rejecting the offending offeror's offer;
  - (2) Awarding a bid to an offeror with a cost or technical proposal that is evaluated lower than the offending offeror's proposal; and
  - (3) Recommending that the State CIO suspend an offeror from doing business with the State;
- (d) The purchasing agency shall report evidence of anticompetitive, deceptive or fraudulent practices to the Attorney General's office and any other appropriate law enforcement authority.

*History Note:* Authority G.S. 75-1, et seq.; 133-24, et seq.; 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .1006 COOPERATIVE PURCHASING**

When an agency participates in a cooperative project with another governmental entity or with a non-profit organization, goods and services necessary for the project shall be procured according to the Rules in this Chapter. If the interest of the State would be better served by one of the following procurement methods, the State CIO may authorize procurement by:

- (1) Making or authorizing acquisition on behalf of such governmental entity or non-profit organization;
- (2) Authorizing acquisition on the State's behalf under the provisions of another state or another governmental entity, provided due consideration is given by the State CIO to the differences in purchasing rules, regulations, and procedures of the contracting entity; or
- (3) Authorizing acquisition on the State's behalf under provisions of the U.S. General Services Administration Supply Schedule 70 and Consolidated Schedule for Information Technology purchases.

*History Note:* Authority G.S. 147-33.76(b1); 147-33.95(b)(2)(a);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .1007 RESERVED FOR FUTURE CODIFICATION**

### **09 NCAC 06B .1008 BOARD OF AWARDS**

*History Note:* Authority G.S. 143-52.1; 147-33.76(b1); 147-33.95; 147-33.101;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. March 1, 2001;  
Repealed Eff. September 1, 2013. (See Rule 06A .0103).

### **09 NCAC 06B .1009-.1029 RESERVED FOR FUTURE CODIFICATION**

### **09 NCAC 06B .1030 DEFAULT PROCEEDINGS; DEBARMENT**

(a) The agency that issued the solicitation document resulting in the contract may find a contractor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor is found in default of contract, the agency that issued the solicitation document resulting in the contract may take action, immediate if necessary, to purchase the needed goods or services on the open market and charge any

additional cost for the goods or services and expense for doing so to the defaulting contractor. If an agency finds a contractor in default, such action and the circumstances shall be reported by the agency to ITS in writing. This does not limit any other remedies that may be available to the state or agency.

(b) ITS may remove the contractor from any distribution lists that may be utilized and debar the contractor from doing IT procurements with the state for a period a period of one year. ITS shall notify any contractor of debarment action in writing.

*History Note: Authority G.S. 147-33.103(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1031 FAITHFUL PERFORMANCE**

(a) A bond, or other means of ensuring faithful performance, may be required of the contractor at the contractor's expense.

(b) Liquidated damages may be provided for in the contract, as a means of ensuring faithful performance from the contractor.

(c) The agency may hold as a retainage a percentage of the contract value to be remitted upon final acceptance by the agency.

(d) The agency may withhold final payment contingent on acceptance of the final deliverable.

*History Note: Authority G.S. 147-33.103(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

### **SECTION .1100 - BID PROTEST, CONTESTED CASE PROCEDURE**

#### **09 NCAC 06B .1101 RIGHT TO HEARING**

Whenever ITS or the State CIO acts in such a way as to affect the rights, duties, or privileges of a party, that party may request a hearing in accordance with this Section and G.S. 150B, Article 3A.

*History Note: Authority G.S. 150B-38;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. March 1, 2001;  
Recodified from 09 NCAC 06B .1010 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1102 PROTEST PROCEDURES FOR AWARD OF CONTRACTS**

(a) To ensure fairness to all offerors and to promote open competition, the purchasing agency shall respond to an offeror's protest over IT contract awards.

(b) This Rule applies to IT contracts with an estimated value of twenty-five thousand dollars (\$25,000) or more. The purchasing agency shall establish procedures to address protests by offerors where the award value is less than twenty-five thousand dollars (\$25,000).

(c) When an offeror protests a contract awarded by an agency of twenty-five thousand dollars (\$25,000) or more in value, the agency and the offeror shall comply with the following:

- (1) The offeror shall deliver a written request for a protest meeting to the agency head or his designee within 15 calendar days from the date of contract award. The agency head shall furnish a copy of the written request to the State CIO within 10 calendar days of receipt. The offeror's request shall contain specific reasons and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the agency head determines that a

meeting would serve no purpose, then the agency head, within 10 calendar days from the date of receipt, may respond in writing to the offeror and refuse the protest meeting request. A copy of the agency head's letter shall be forwarded to the State CIO.

- (2) If the protest meeting is granted, the agency head shall give written notice to the State CIO and any awarded vendor of the date and time of the protest meeting. The agency shall give notice to the awarded vendor and the State CIO stating whether any purchase order or performance has been suspended or terminated. The agency head shall schedule the meeting within 30 calendar days after receipt of the letter, unless a later date is accepted by the protesting party and the agency. Within 10 calendar days from the date of the protest meeting, the agency head shall respond to the offeror in writing with an agency decision. A copy of the agency head's letter shall be forwarded to the State CIO.
- (3) If a protest is determined to be valid by the State CIO then the following outcomes may occur:
  - (A) The award and issued purchase order shall be canceled and the solicitation for offers to contract is not re-bid;
  - (B) The award and issued purchase order shall be canceled and the solicitation for offers to contract is re-bid;
  - (C) The award and issued purchase order shall be canceled and the contract shall be awarded to the next lowest priced, technically competent, qualified offeror, if that offeror agrees to still honor its submitted bid.

(d) When an offeror protests a contract awarded by the State CIO that is twenty-five thousand dollars (\$25,000) or more in value, the State CIO and the offeror shall comply with the following:

- (1) The offeror shall deliver a written request for a protest meeting to the State CIO within 15 calendar days from the date of contract award. The offeror's request shall contain specific reasons and any supporting documentation regarding the offeror's concern with the award. If the request does not contain this information or the State CIO determines that a meeting would serve no purpose, then the State CIO, within 10 calendar days from the date of receipt of the offeror's protest, may respond in writing to the offeror and refuse the protest meeting request. A copy of the State CIO's letter shall be forwarded to the designated hearing officer.
- (2) If the protest meeting is granted, the State CIO shall attempt to schedule the meeting within 30 calendar days after receipt of the offeror's protest unless a later date is accepted by the protesting party and the State CIO. Within 10 calendar days from the date of the protest meeting, the State CIO shall respond to the offeror in writing with a decision. A copy of the decision shall be forwarded to the designated hearing officer.

(e) When an offeror protests a statewide term or convenience contract or master agreement established by the State CIO, the State CIO and the offeror shall comply with the following:

- (1) The offeror shall deliver a written request for a protest meeting to the State CIO within 15 calendar days from the date of the contract award. The offeror's request shall contain specific reasons and any supporting documentation regarding the offeror's concern with the award. If the request does not contain this information or the State CIO determines that a meeting would serve no purpose, the State CIO, within 10 calendar days from the date of receipt of the offeror's request shall respond in writing to the offeror and refuse the protest meeting request. A copy of the State CIO's letter shall be forwarded to the designated hearing officer.
- (2) If the protest meeting is granted, the State CIO shall give written notice to the designated hearing officer and any awarded vendor of the date and time of the protest meeting. Notice shall be given to the awarded vendor and the designated hearing officer stating whether any purchase order or performance has been suspended or terminated. The State CIO shall schedule the meeting within 30 calendar days after receipt of the offeror's protest unless a later date is accepted by the protesting party and the State CIO. Within 10 calendar days from the date of the protest meeting, the State CIO shall respond to the protesting offeror in writing with a decision. A copy of the decision shall be forwarded to the designated hearing officer.

(f) If a party desires further administrative review after receiving a decision under Paragraph (c), (d), or (e) of this Rule, the protesting party may, within 60 days from the date such decision is received, request a hearing and final decision by the State CIO in accordance with these Rules and Article 3A of G.S. 150B. When further administrative review involves a contract awarded by an agency that is twenty-five thousand dollars (\$25,000) or more in value, the agency shall be a party in any further review processes.

(g) The signature of an attorney or party on a protest constitutes a certification by the signer that the signer has read such document; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose such as to harass, cause unnecessary delay or a needless increase in the cost of the procurement or of the litigation. If a protest is determined to be frivolous or to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious, the State CIO, upon motion or upon his own initiative, may impose any sanction available under the N.C. Rules of Civil Procedure. Notification to the affected party shall be in writing.

*History Note:* Authority G.S. 147-33.76(b1); 150B-38;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. March 1, 2001;  
Recodified from 09 NCAC 06B .1009 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .1103 REQUEST FOR HEARING**

(a) A request for an administrative hearing under Rule .1101 of this Section must be in writing and shall contain the following information:

- (1) name and address of the person requesting the hearing;
- (2) a concise statement of the departmental action being challenged;
- (3) a concise statement of the manner in which the petitioner is aggrieved; and
- (4) a clear and specific demand for a public hearing.

(b) A request for hearing shall be delivered to the State CIO, or ITS hearing officer, by U.S. Postal Service, commercial or private courier. A request for hearing shall be addressed to the attention of the State CIO or Hearing Officer, N.C. Office of Information Technology Services, P.O. Box 17209, Raleigh, North Carolina 27619-7209; or N.C. Office of Information Technology Services, 3700 Wake Forest Road, Raleigh, North Carolina, 27609.

*History Note:* Authority G.S. 147-33.76(b1); 150B-38(a);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. March 1, 2001;  
Recodified from 09 NCAC 06B .1011 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .1104 DEFINITIONS**

The definitions contained in G.S. 150B-2 are incorporated in this Section by reference. In addition to those definitions, the following definitions apply to this Section:

- (1) "File or filing" means to place or the placing of the paper or item to be filed into the care and custody of the hearing officer. All documents filed with the hearing officer, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".
- (2) "Hearing officer" shall be the State CIO or appointee under G.S. 150B-40 as the presiding officer, or an administrative law judge assigned under G.S. 150B-40. The phrase "a majority of the agency," or "an agency" as specified in G.S. 150B-40 shall be interpreted in these Rules to mean the State CIO. The phrase "an agency member" or "member of an agency," if not applicable by its terms to the State CIO, shall not be applicable in these Rules.
- (3) "Service or serve" means, unless otherwise provided by law or Rule 4 of the North Carolina Rules of Civil Procedure, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person required to be served at his or her last known address. A certificate of service by the person making the service shall be appended to every document requiring service under this Section. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service;



or postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

*History Note:* Authority G.S. 147-33.76(b1); 150B-40;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. March 1, 2001;  
Recodified from 09 NCAC 06B .1012 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .1105 GENERAL PROVISIONS**

The following general provisions apply to this Section:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes apply in matters before the hearing officer unless another specific statute or rule provides otherwise.
- (2) ITS may supply, at the cost for copies, forms for use in contested cases.
- (3) Every document filed with the hearing officer shall be signed by the author of the document, and shall contain his name, address, telephone number, and North Carolina State Bar number if the author is an attorney. An original and one copy of each document shall be filed. In any proceeding referred to the Office of Administrative Hearings (OAH) pursuant to G.S. 150B-40, parties shall deliver a copy of each document filed with the OAH to the State CIO.
- (4) Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.
- (5) This Section and copies of all matters adopted by reference in this Section are available from ITS at cost.
- (6) The rules of statutory construction contained in Chapter 12 of the General Statutes apply in the construction of this Section. The rules contained in this Section govern the conduct of contested case hearings under Article 3A of Chapter 150B of the General Statutes.
- (7) Unless otherwise provided in a specific statute, time computations in contested cases under this Section are governed by G.S. 1A-1, Rule 6.
- (8) If the State CIO determines that a hearing would assist him or her in reaching a decision, he or she may schedule a hearing, notwithstanding the fact that no request for a hearing has been received. In such cases the State CIO's written documentation shall be treated as a request for hearing.
- (9) The hearing officer may designate legal counsel as an advisor on matters of law for the benefit of the hearing officer during the proceedings.

*History Note:* Authority G.S. 147-33.76(b1); 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. March 1, 2001;  
Recodified from 09 NCAC 06B .1013 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .1106 ORDER FOR PREHEARING STATEMENTS**

The hearing officer may serve all parties with an order for prehearing statements together with, or after service of, the notice of hearing. Every party thus served shall, within 30 days after service, file the requested statements setting out the party's present position on the following:

- (1) The nature of the proceeding and the issues to be resolved;
- (2) A brief statement of the facts and reasons supporting the party's position on each matter in dispute;
- (3) A list of proposed witnesses with a brief description of their proposed testimony;

- (4) A description of the discovery, if any, the party will seek to conduct prior to the contested case hearing and an estimate of the time needed to complete discovery;
- (5) Venue considerations;
- (6) Estimation of length of the hearing;
- (7) The name, address, and telephone number of the party's attorney, if any; and
- (8) Other matters permitted under Article 3A of Chapter 150B.

The prehearing statement shall not be used to amend the original protest or to establish jurisdiction not previously established by the protest or request for hearing.

*History Note: Authority G.S. 147-33.76(b1); 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1014 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**09 NCAC 06B .1107 DUTIES OF THE HEARING OFFICER**

(a) In conjunction with the powers in this Section, in Article 3D of Chapter 147 of the General Statutes and in G.S. 150B, Article 3A the hearing officer shall perform the following duties, consistent with law and as recommendations to the State CIO, if the hearing officer is not the State CIO:

- (1) Hear and rule on motions;
- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed to be necessary to make a complete record and to aid in the full development of material facts in the case;
- (5) Make preliminary, interlocutory, or other orders as deemed to be appropriate;
- (6) Recommend a summary disposition of the case or any part thereof when there is no genuine issue as to any material fact or recommend dismissal when the case or any part thereof has become moot or for other reasons; and
- (7) Apply sanctions in accordance with Rule .1114 of this Section.

(b) Recommended final agency decision. If an appointed hearing officer presides over any hearing, the hearing officer shall issue a written recommended final agency decision. The appointed hearing officer shall serve a copy of the recommended final agency decision upon all parties and the State CIO. Upon review of the recommended decision issued by the appointed hearing officer, the State CIO may adopt, modify or vacate the recommended decision and notify the parties. The State CIO shall make the final agency decision.

(c) Hearing conducted by the State CIO. In lieu of assigning a hearing officer to preside over any hearing, the State CIO may conduct the hearing. After the time for the filing of proposed findings of fact and conclusions of law by the parties expires, the State CIO shall issue a final agency decision.

(d) The recommended decision of the hearing officer, if any, and the decision of the State CIO shall be in writing and shall include findings of fact and conclusions of law. The report, decision or determination of the State CIO upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes.

*History Note: Authority G.S. 147-33.76(b1); 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. March 1, 2001;  
Recodified from 09 NCAC 06B .1015 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

**09 NCAC 06B .1108 CONSENT ORDER; SETTLEMENT; STIPULATION**

Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with the hearing officer to promote consensual disposition of the case. Any such disposition must be approved in writing by the State CIO.

*History Note:* Authority G.S. 147-33.76(b1); 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1016 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .1109 SETTLEMENT CONFERENCE**

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing. Notice of the conference may be included in the pre-hearing conference notice or in a separate written order. The purpose of a settlement conference is to:

- (1) Explore any grounds upon which a contested case may be resolved without the need for a hearing; and
- (2) Pursue any other matters which will reduce the cost, save time, simplify the issues to be heard, or otherwise aid in the expeditious disposition of the matters to be addressed by the hearing.

(b) Unless the parties and the hearing officer agree, a unilateral request for a settlement conference does not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the hearing officer. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

(c) All parties shall attend or be represented at a settlement conference. Parties or their representatives shall be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in Rule .1106 of this Section.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the hearing officer presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the parties and on the hearing officer who is assigned to hear the case and subject to final approval by the State CIO if the hearing officer is not the State CIO.

*History Note:* Authority G.S. 147-33.76(b1); 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. March 1, 2001;  
Recodified from 09 NCAC 06B .1017 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .1110 PREHEARING CONFERENCE**

(a) The purpose of the prehearing conference is:

- (1) to simplify the issues to be determined;
- (2) to obtain stipulations in regard to foundations for testimony or exhibits;
- (3) to obtain stipulations or other agreements as to the facts or the application of particular laws;
- (4) to consider the proposed witnesses for each party;
- (5) to identify and exchange documentary evidence intended to be introduced at the hearing;
- (6) to determine dates or schedules for the completion of any discovery;
- (7) to establish hearing dates and locations if not previously set;

- (8) to consider such other matters that may be necessary or advisable; and, if possible,
- (9) to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(b) Upon the request of any party or upon the hearing officer's own motion, the hearing officer may hold a prehearing conference before a contested case hearing. The hearing officer may require the parties to file prehearing statements in accordance with Rule .1106 of this Section. A prehearing conference on the simplification of issues, amendments, stipulations, or other matters may be entered on the record and may be made the subject of an order by the hearing officer. Venue for purposes of a prehearing conference shall be determined in accordance with G.S. 150B-38(e).

*History Note: Authority G.S. 147-33.76(b1); 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1018 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1111 DISCOVERY**

(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening, or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties shall exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

(b) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy warrant the discovery. In ruling on a motion for discovery, the hearing officer shall recognize all privileges recognized at law.

(c) When a party serves another party with a request for discovery, that request need not be filed with the hearing officer but shall be served upon all parties.

(d) The parties shall immediately commence to exchange information voluntarily, to seek access as provided by law to public documents, and to exhaust other informal means of obtaining discoverable material.

(e) Unless otherwise ordered, all discovery shall be completed no later than the first day of the hearing. The hearing officer may shorten or lengthen the period for discovery and adjust hearing dates accordingly and, where necessary for a fair and impartial hearing, allow discovery during the pendency of the hearing.

(f) Unless otherwise ordered, no later than 15 days after receipt of a notice requesting discovery, the receiving party shall:

- (1) Move for relief from the request;
- (2) Provide the requested information, material or access; or
- (3) Offer a schedule for reasonable compliance with the request.

(g) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to this Rule shall be as provided for by G.S. 1A-1(37), to the extent that a hearing officer may impose such sanctions, and Rule .1114 of this Section.

*History Note: Authority G.S. 147-33.76(b1); 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1020 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1112 CONSOLIDATION OF CASES**

- (a) The hearing officer may order a joint hearing of any matters at issue in contested cases involving common questions of law or fact or multiple hearings involving the same or related parties, or may order the cases consolidated or make other orders to reduce costs or delay in the hearings.
- (b) A party requesting consolidation shall serve a motion for consolidation on all parties to the cases to be consolidated and shall file the original with the hearing officer. Any party objecting to the motion shall serve and file its objections within five days after service of the petition for consolidation.
- (c) Upon determining whether cases shall be consolidated, the hearing officer shall serve a written order on all parties that contains a description of the cases for consolidation and the reasons for the decision.
- (d) Nothing contained in this Rule prohibits the parties from stipulating and agreeing to a consolidation, which shall be granted upon submittal of a written stipulation, signed by every party, to the hearing officer.
- (e) Following receipt of a notice of or order for consolidation, any party may move for severance by serving a motion on all other parties and filing it with the hearing officer at least seven days before the first scheduled hearing date. If the hearing officer finds that the consolidation will prejudice any party, he shall order the severance or other relief that will prevent the prejudice from occurring.

*History Note:* Authority G.S. 147-33.76(b1); 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1019 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .1113 SUBPOENAS**

The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. A party seeking an order imposing sanctions for failure to comply with any subpoena issued under this Rule must prove proper service of the subpoena.

*History Note:* Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1021 Eff. March 19, 2008;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

#### **09 NCAC 06B .1114 SANCTIONS**

(a) If a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may:

- (1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed to be proved without further evidence;
- (2) Dismiss or grant the motion or petition;
- (3) Suppress a claim or defense; or
- (4) Exclude evidence.

(b) In the event that any party, attorney at law, or other representative of a party fails to comply with a subpoena, engages in behavior that obstructs the orderly conduct of proceedings, or would constitute contempt if done in the General Court of Justice, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

(c) If a witness fails to comply with a subpoena, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

*History Note:* Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1022 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1115      MOTIONS**

(a) Unless otherwise required or permitted by these Rules, any party may file any motion which would be permitted under the Rules of Civil Procedure as though the contested case was a matter pending in a civil trial court. Motions practice in contested cases before the hearings officer pursuant to G.S. 150B, Article 3A, shall be governed by Rule 6 of the Rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts of North Carolina.

(b) The opposing party may file such response as is permitted by the Rules of Civil Procedure to any such motion within the time permitted by the Rules of Civil Procedure.

(c) The hearing officer shall rule on any correctly filed motion. The hearing officer may rule on any motion with or without oral argument. The hearing officer shall notify the parties of the location, date, and time for oral argument if, in the hearing officer's discretion, oral argument is necessary for a full and complete record. The notice shall indicate whether the argument is to be conducted in person or by conference call.

*History Note:      Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1023 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1116      INTERVENTION**

(a) Any person not named in the notice of hearing who desires to intervene in a contested case as a party shall file a timely motion to intervene and shall serve the motion upon all existing parties. Timeliness shall be determined by the hearing officer in each case based on circumstances at the time of filing. The motion shall show how the movant's rights, duties, or privileges may be determined or affected by the contested case; shall show how the movant may be directly affected by the outcome or show that the movant's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate movant's statutory right to intervene if one exists.

(b) Any party may object to the motion for intervention by filing a written notice of objections with the hearing officer within five days after service of the motion if there is sufficient time before the hearing. The notice of objection shall state the party's reasons for objection and shall be served upon all parties. If there is insufficient time before the hearing for a written objection, the objection may be made at the hearing.

(c) When the hearing officer deems it to be necessary to develop a full record on the question of intervention, he may conduct a hearing on the motion to determine specific standards that will apply to each intervenor and to define the extent of allowed intervention.

(d) The hearing officer shall allow intervention upon a proper showing under this Rule, unless he finds that the movant's interest is adequately represented by one or more parties participating in the case or unless intervention is mandated by statute, rule, or court decision. An order allowing intervention shall specify the extent of participation permitted the intervenor and shall state the hearing officer's reason. An intervenor may be allowed to:

- (1) File a written brief without acquiring the status of a party;
- (2) Intervene as a party with all the rights of a party; or
- (3) Intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

*History Note:      Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1024 Eff. March 19, 2008;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1117      CONTINUANCES**

- (a) A request for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to the hearing officer and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days before a hearing shall be denied unless the reason for the request could not have been ascertained earlier.
- (b) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing officer shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient.
- (c) A continuance shall not be granted if granting it would prevent the case from being concluded within any statutory or regulatory deadline.
- (d) As used in this Rule, "good cause" includes death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the hearing officer have agreed to a new hearing date or the parties have agreed to a settlement of the case that had been or is likely to be approved by the hearing officer.
- (e) As used in this Rule, "good cause" does not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged; unavailability of a witness if the witness' testimony can be taken by deposition; or failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

*History Note: Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1025 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1118 RIGHTS AND RESPONSIBILITIES OF PARTIES**

- (a) A party has the right to present evidence, rebuttal testimony, and argument with respect to issues of fact, law and policy; and to cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence.
- (b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their needs become evident to the requesting party. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the hearing officer or agreed upon at a prehearing conference.
- (c) The hearing officer shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the hearing officer shall simultaneously send a copy to all other parties.
- (d) All parties have the continuing responsibility to notify the hearing officer of their current addresses and telephone numbers.
- (e) If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.
- (f) With the approval of the hearing officer, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the hearing officer.
- (g) Before issuing a recommended decision to the State CIO, the hearing officer may order any party to submit proposed findings of fact and written arguments. Before issuing a final decision in a contested case which has been assigned by the State CIO to a person other than the State CIO as described in G.S. 150B-40(e) and these Rules, the State CIO shall order parties to submit proposed findings of fact and written arguments.

*History Note: Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;*

*Eff. August 1, 2000;*  
*Recodified from 09 NCAC 06B .1026 Eff. March 19, 2008;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1119 WITNESSES**

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the hearing officer's own motion, the hearing officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*History Note: Authority G.S. 150B-38(h);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Recodified from 09 NCAC 06B .1027 Eff. March 19, 2008;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1120 EVIDENCE**

- (a) The North Carolina Rules of Evidence as found in G.S. Chapter 8C govern in all contested case proceedings, except as provided otherwise in this Section and G.S. 150B-41.
- (b) The hearing officer shall admit all evidence that has probative value. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The hearing officer may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will require undue consumption of time or create substantial danger of undue prejudice or confusion.
- (c) Contemporaneous objections by a party or a party's attorney are not required in the course of a hearing to preserve the right to object to the consideration of evidence by the hearing officer in reaching a decision or by the court upon judicial review.
- (d) All evidence to be considered in the case, including all records and documents or true and accurate photocopies thereof, shall be offered and made a part of the record in the case. Except as provided in Paragraph (f) of this Rule, factual information or evidence that is not offered shall not be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the materials so incorporated are available for examination by the parties.
- (e) Documentary evidence in the form of copies or excerpts may be received in the discretion of the hearing officer or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a question is raised about the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy instead of the original.
- (f) The hearing officer shall take official notice of standards and policies that have been established by ITS pursuant to Article 3D of Chapter 147 of the General Statutes. The hearing officer may take official notice of additional facts or documents as requested by a party or within the specialized knowledge of the hearing officer by entering a statement of the noticed fact or document and its source into the record.
- (g) When the State CIO takes official notice of evidence not in the record when making a final decision, the parties shall be afforded notice and a hearing to present arguments against the consideration of such evidence before a final decision is made.

*History Note: Authority G.S. 150B-38(h);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Recodified from 09 NCAC 06B .1028 Eff. March 19, 2008;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1121 FINAL AGENCY DECISION; OFFICIAL RECORD**



- (a) A copy of any decision or order shall be served as in the manner provided by G.S. 150B-42(a). The cost of the service, fees, and expenses for any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314.
- (b) The official record of a contested case is available for public inspection during the agency's business hours except for those portions, if any, that the hearing officer ordered sealed as consistent with applicable law.
- (c) The hearing officer may, consistent with law, order part or all of an official record sealed.
- (d) The official record shall be prepared in accordance with G.S. 150B-42.
- (e) Contested case hearings shall be recorded either by a recording system or a court reporter using stenomask or stenotype.
- (f) Costs for a court reporter's services including transcript costs and other copying costs incurred shall be charged to or apportioned equally among the party or parties requesting a transcript or copies of other records.
- (g) A 24-hour hearing cancellation notice is required in all cases. The party or parties responsible for the cancellation shall be liable for any cancellation fees.
- (h) Transcripts of proceedings during which oral evidence is presented shall be made only upon request of a party. Transcript costs shall include the cost of an original. An attorney requesting a transcript on behalf of a party is a guarantor of payment of the cost. Cost shall be determined under supervision of the hearing officer who may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party that submitted it.
- (i) Copies of tapes or other transcript media used (e.g., CDs) are available upon written request at a cost of five dollars (\$5.00) per tape or CD.
- (j) Copies of the hearing audio recordings, or non-ITS certified transcripts from those audio recordings are not part of the official record.

*History Note:* Authority G.S. 150B-38(h);  
 Temporary Adoption Eff. January 1, 2000;  
 Eff. August 1, 2000;  
 Amended Eff. March 1, 2001;  
 Recodified from 09 NCAC 06B .1029 Eff. March 19, 2008;  
 Amended Eff. September 1, 2013;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

## **SECTION .1200 – DECLARATORY RULINGS; DEFAULT PROCEEDINGS; DISQUALIFICATIONS; AND DEBARMENT**

### **09 NCAC 06B .1201 DECLARATORY RULINGS**

- (a) Any request for a determination regarding the application of a relevant rule, statute or standard established by the State CIO to a specific factual situation must be directed to the State CIO. The request for a ruling will follow the Rules of this Section and applicable statutes. A declaratory ruling proceeding may include written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request.
- (b) Declaratory rulings pursuant to G.S. 150B-4 shall be issued by the State CIO only on the validity of a relevant rule or standard or on the applicability of a rule or order of the State CIO to stipulated facts. A declaratory ruling shall not be issued on a matter requiring an evidentiary proceeding.
- (c) As used in this Section, "standard" shall refer to and include such standards, policies and procedures adopted by the State CIO pursuant to authority found in Article 3D of Chapter 147 of the N.C. General Statutes.
- (d) The petitioner must possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling in order to comply with statutory requirements, ITS rules, or standards shall be apparent from the petition and shall be explained therein.

*History Note:* Authority G.S. 147, Article 3D; 150B, Article 4;  
 Eff. September 1, 2013;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

### **09 NCAC 06B .1202 REQUESTS FOR DECLARATORY RULINGS**

- (a) Requests for a declaratory ruling shall be in writing, dated and verified by the person submitting the same.

(b) The request shall contain:

- (1) The petitioner's name, address and telephone number;
- (2) The rule or statute, or both, referred to;
- (3) A statement of facts supporting the petitioner's request for a declaratory ruling;
- (4) The petitioner's opinion, a statement of any legal authorities, in support of the interpretation given the statute or rule by the petitioner;
- (5) A concise statement of the manner in which the petitioner is aggrieved by the rule, statute, or standard, or its potential application to the petitioner;
- (6) A statement of the practices or procedures likely to be affected by the requested declaratory ruling and the persons likely to be affected by the ruling.
- (7) A draft of the declaratory ruling sought by the petitioner, if a specified outcome is sought by the petitioner; and
- (8) A statement of whether the petitioner desires to present oral argument.

*History Note: Authority G.S. 150B-104;  
Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1203      RESPONSE TO A REQUEST FOR A DECLARATORY RULING**

(a) The State CIO shall consider the request within 30 days of receipt. The State CIO shall issue a ruling except:

- (1) When the State CIO finds that the person making the request is not a "person aggrieved," as defined in G.S. 150B-2(6);
- (2) When the State CIO finds, in a request concerning the validity of a rule, that the rulemaking record shows that the agency considered all factors identified by the petitioner as specific or relevant when the rule in question was adopted;
- (3) When the State CIO finds that the person requesting the ruling is not directly or indirectly affected substantially in his person, property, or public office or employment by the rule, statute, or order of the department which is the subject of the request;
- (4) When the petition does not state with enough specificity the factual situation involved, or the question is presented in such a manner that the State CIO cannot determine what the question is, or that the State CIO cannot respond with a specific ruling that will be binding on all parties;
- (5) When the State CIO has made a determination in a similar contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (6) Where the subject matter of the request is involved in pending litigation or contested case in any state or federal court in North Carolina.

(b) The State CIO shall, not later than the 30th day after receiving such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. The State CIO may rule at any meeting convened to consider the request, or defer the ruling until a later date, but not later than the 30th day after the request for a ruling is received. The State CIO may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in any notice given to the requesting party.

(c) Whenever the State CIO believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the State CIO shall notify the petitioner of his decision in writing, stating reasons for the denial of a declaratory ruling.

(d) The State CIO shall consider a request to make a declaratory ruling on the validity of a rule only when the petitioner shows that circumstances are so changed since adoption of the rule that such a ruling would be warranted, or that the rule-making record for the rule evidences a failure by the agency to consider facts presented in the petition at the time of adoption of the rule. The petitioner shall state in his request the consequences of a failure to issue a ruling.

*History Note: Authority G.S. 150B-4;  
Eff. September 1, 2013;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1204 EFFECT OF A DECLARATORY RULING**

For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) The statute or rule interpreted by the declaratory ruling is amended or repealed;
- (2) The State CIO changes the declaratory ruling prospectively; or
- (3) Any court sets aside the ruling.

*History Note: Authority G.S. 150B-4;  
Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1205 RECORD OF RULING**

A record of all declaratory rule making proceedings shall be maintained at the State CIO's office and shall be available for public inspection during business hours.

*History Note: Authority G.S. 150B-4;  
Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06B .1206 DEFAULT PROCEEDINGS; DISQUALIFICATION; AND DEBARMENT**

(a) Disqualification: The purchasing agency may find a vendor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a vendor is found in default of contract, the purchasing agency may take action, immediate if necessary, to purchase the needed goods or services on the open market and charge any additional cost for the goods or services and expense for doing so to the defaulting vendor. If an agency other than ITS finds a vendor in default, such action and the circumstances shall be reported by the agency to ITS in writing. This does not limit any other remedies that may be available to the state or agency.

(b) Causes for Debarment or Suspension: The causes for debarment or suspension include the following:

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state vendor;
- (3) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) deliberate failure without good cause to perform a contract in accordance with the specifications or within the time limit provided in the contract: and
- (5) for violation of the State Government Ethics Act or the Lobbying laws set forth in G.S. 138A-1 et seq., and GS 120C-1 et seq. respectively.

(c) Effect of Debarment: Upon finding cause to debar a vendor, The State CIO may remove the vendor from any distribution lists that may be utilized and prohibit award of any contract to the debarred vendor for a period not to exceed one year.

(d) Notice: The State CIO shall notify any vendor of the disqualification or debarment in writing.

*History Note: Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1030 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

### **09 NCAC 06B .1207 PERFORMANCE ASSURANCE**

A contract may include terms ensuring a vendor's performance such as:

- (1) A bond, or similar assurance, may be required of the vendor at the vendor's expense;
- (2) Liquidated damages;
- (3) A percentage of the contract value held as a retainage; and
- (4) Withholding final payment contingent on acceptance of the final deliverable.

*History Note: Authority G.S. 147-33.72C; 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1031 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

## **SECTION .1300 - EXEMPTIONS, EMERGENCIES, AND SPECIAL DELEGATIONS**

### **09 NCAC 06B .1301 EXEMPTIONS**

(a) The following are exemptions to the State CIO review and approval for purchases that exceed an agency's delegated authority.

- (1) Services provided by individuals through direct employment contracts with the state;
- (2) Non-severable services that are merely incidental to the purchase of supplies, materials, or equipment such as installation services;
- (3) Personal services provided by a professional individual (person) on a temporary or occasional basis;
- (4) Services provided directly by an agency of the state, federal or local government, or their employees when performing the service as part of their normal governmental function; and
- (5) Information technology subscriptions for printed materials or online technology information news services. Such services do not include software, or software services, licensed by subscription or delivered online.

(b) In addition to products and services noted in Paragraph (a) of this Rule, the State CIO may exempt other products and services from purchase through the State CIO provided that the State CIO determines no price or quality advantage would be gained by handling a particular acquisition through the State CIO.

(c) As used in this Rule, direct employment contract means an agreement for services under Paragraph (a) made by the person and an agency of the State.

*History Note: Authority G.S. 147-33.95(f);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1101 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

### **09 NCAC 06B .1302 EMERGENCY SITUATIONS OR PRESSING NEED**

(a) An agency may make purchases of goods or services in the open market in cases of emergency or pressing need.

(b) When emergency or pressing need action is necessary, and the estimated expenditure is over the purchasing agency's delegation, prior verbal approval shall be obtained from the State CIO unless the purchase must be made outside of business hours, during holidays or when state offices are otherwise closed. Subsequently, if the expenditure is over the purchasing agency's delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to the State CIO.

*History Note: Authority G.S. 143-52.1; 143B-1322(c); 143B-1350;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1102 Eff. March 19, 2008;*

*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015;*  
*Amended Eff March 1, 2016.*

### **09 NCAC 06B .1303 SPECIAL DELEGATIONS**

*History Note: Authority G.S. 147-33.95(f);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Recodified from 09 NCAC 06B .1103 Eff. March 19, 2008;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015;*  
*Repealed Eff. July 1, 2015 pursuant to G.S. 150B-21.7 (see S.L. 2015-241, s. 7A.2(b)).*

### **09 NCAC 06B .1304 GENERAL DELEGATIONS**

- (a) The State CIO may suspend, rescind, lower or raise this general delegation for a specific agency, up to the benchmark established by the Secretary of Administration upon consideration of the agency's overall capabilities, including staff resources, organizational structure, training, purchasing compliance reviews, electronic communication capabilities, and audit reports.
- (b) If an agency wishes to obtain an increase in its general delegation, to the IT benchmark set by the DOA Secretary, it shall submit a request in writing, outlining its overall capabilities, to the State CIO for the State CIO's consideration.

*History Note: Authority G.S. 143B-1322(c); 143B-1350;*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Amended Eff. March 1, 2001;*  
*Recodified from 09 NCAC 06B .1104 Eff. March 19, 2008;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015;*  
*Amended Eff. March 1, 2016.*

### **09 NCAC 06B .1305 COMPLIANCE REVIEWS**

- (a) The State CIO may conduct compliance reviews on purchasing practices at any purchasing agencies. The purpose of the compliance review shall be for determining if an agency is complying with IT purchasing statutes and rules. A copy of the compliance report shall be provided to the agency head, the State Auditor, and the State Budget Officer.
- (b) Staff designated by the State CIO may request the purchasing agency's purchasing records for the purpose of the compliance review. The purchasing agency shall cooperate with such staff, providing them with all requested records, adequate office space for conducting the review if performed at the agency's location and agency purchasing staff for discussion of purchase transactions. The State CIO shall not require of the agency any more than is needed to complete the review.
- (c) The State CIO shall provide to each agency, upon request, ITS' assistance in educational training for the agency's staff to better acquaint them with State purchasing statutes and rules.

*History Note: Authority G.S. 147-33.76(b1);*  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. August 1, 2000;*  
*Recodified from 09 NCAC 06B .1105 Eff. March 19, 2008;*  
*Amended Eff. September 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

## SECTION .1400 - RECORDS

### 09 NCAC 06B .1401 RECORD MAINTENANCE

Except where state law provides to the contrary, after the award of a contract, the purchasing records of an agency are public documents, and these documents shall be maintained for a period of five years after the expiration date of the contract. Record retention shall be in accordance with G.S. 121-5.

*History Note: Authority G.S. 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1201 Eff. March 19, 2008;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

### 09 NCAC 06B .1402 PROCUREMENT FILE RECORDS

(a) The purchasing agency shall identify each paper or electronic contract record individually so it can be located and referenced.

(b) The purchasing agency shall document all purchase transactions. As applicable, each paper or electronic procurement file shall include the following records:

- (1) Requisition;
- (2) Approval to proceed with acquisition;
- (3) Each original executed offer if in writing, or written documentation of verbal offer received;
- (4) Documentation supporting whether each offeror is responsive and responsible to terms of the solicitation, the use of a competitive range selection and rejection of offerors for negotiations, best and final offers (BAFO), award, or cancellation or other disposition of the solicitation as may be applicable;
- (5) Worksheets/evaluations of individual offers;
- (6) Vendor distribution list or proof of fulfilling advertisement requirements, and any conditions and approval for waiver to advertise, publish, and notify any part of a procurement action;
- (7) Written justification for limitation or waiver of competition, or emergency purchase, or waiver of any rule during the solicitation process;
- (8) Tabulation of offers received;
- (9) State CIO approval of award recommendation;
- (10) Purchase order or other payment verification;
- (11) Reason(s) for receiving only one offer in response to a solicitation;
- (12) Summary of vendor debriefing, if any;
- (13) Signed contracts or agency acceptance of offer(s); and
- (14) Protest documents.

(c) After award of contract, all material in the procurement file, except non-public information, shall be made available for inspection in accordance with the Public Records Law, G.S. 132-1 et seq.

*History Note: Authority G.S. 143B-1350(e);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Recodified from 09 NCAC 06B .1202 Eff. March 19, 2008;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest April 25, 2015;  
Amended Eff. March 1, 2016.*

## SUBCHAPTER 06C – 911 BOARD (*Effective July 1, 2016*)

### SECTION .0100 – FORMS, DEFINITIONS, ADMINISTRATION

#### 09 NCAC 06C .0101 FORMS

(a) The 911 Board shall prescribe forms by or for use by Public Safety Answering Points (PSAPs), service providers, and any other parties as may be needed to ensure uniformity in the operation of these Rules and policies adopted by the Board.

(b) All forms referenced in this Subchapter are published on the Board's website at <https://www.nc911.nc.gov> and may be accessed free of charge.

*History Note: Authority G.S. 62A-42;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0102 PHYSICAL ADDRESS OF 911 BOARD**

(a) The physical and mailing address of the 911 Board is:

911 Board  
c/o NC Department of Information Technology  
3700 Wake Forest Road  
Raleigh, NC 27609

(b) Contact information for staff is located on the Board's website at <https://www.nc911.nc.gov>.

*History Note Authority: G.S. 62A-42;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0103 DEFINITIONS**

In addition to the terms defined in G.S. 62A-40, the following terms have the following definition when used in this Subchapter:

- (1) "911 Line/Trunk" means a telephone line/trunk which is dedicated to providing a caller with access to the designated PSAP by dialing the digits 911.
- (2) "Addressing" means the local government's assigning of a numerical address and street name (the street name may be numerical) to all locations within a local government's geographical service area for the purpose of providing Enhanced 911 service.
- (3) "Back-up PSAP" means a facility equipped with automatic number identification, automatic location identification displays, and all other features of a primary PSAP that it serves. A back-up PSAP shall receive 911 calls only when they are transferred from the primary PSAP or on an alternate routing basis when calls cannot be completed to the primary PSAP. A back-up PSAP facility may be unattended when not in use, remote from the Public Safety Answering Point, and used to house equipment necessary for the functioning of an emergency communications system.
- (4) "Circuit" means the conductor or radio channel and associated equipment used to perform a specific function in connection with a 911 call system.
- (5) "CMRS" means a commercial mobile radio service.
- (6) "CMRS Non-recurring cost (NRC)" means one-time costs incurred by CMRS service providers for initial connection to selective routers and the wireless systems service provider (third party vendor non-recurring) cost.
- (7) "Communications System" means a combination of links or networks that serve a general function such as a system made up of command, tactical, logistical, and administrative networks supporting the operations of an individual PSAP.
- (8) "Comprehensive Emergency Management Plan (CEMP)" means a disaster recovery plan that conforms to guidelines established by the PSAP and is designed to address natural, technological, and man-made disasters.
- (9) "Computer-Aided Dispatch (CAD)" means a combination of hardware and software that provides data entry, makes resource recommendations, and notifies and tracks those resources before, during, and after 911 calls, and preserves records of those calls and status changes for later analysis by a PSAP or the Board.
- (10) "Computer-Aided Dispatch (CAD) Terminal" means an electronic device that combines a keyboard and a display screen to allow the exchange of information between a telecommunicator and one or more computers in the system or network.
- (11) "Control Console" means a wall-mounted or desktop panel or cabinet containing controls to operate communications equipment.
- (12) "Designated Public Safety Answering Point (PSAP)" means a Primary PSAP determined pursuant to the FCC Order or a Board approved Back-up PSAP.

- (13) "Dispatch Circuit" means a circuit over which a signal is transmitted from the PSAP to an Emergency Response Facility (ERF) or Emergency Response Unit (ERU) to notify the Emergency Response Unit to respond to an emergency.
- (14) "Emergency 911 Call Processing/Dispatching" means a process by which a 911 call answered at the PSAP is transmitted to Emergency Response Facilities (ERFs) or to Emergency Response Units (ERUs) in the field.
- (15) "Emergency Response Facility (ERF)" means a structure or a portion of a structure that houses PSAP equipment and personnel for receiving and dispatching 911 calls.
- (16) "Emergency Response Unit (ERU)" means a first responder, such as a police vehicle, a fire truck, or an ambulance. It also includes personnel who respond to fire, medical, law enforcement, or other emergency situations for the preservation of life and safety.
- (17) "FCC Order" means the Order in FCC Docket 94-102 adopted by the Federal Communications Commission on December 1, 1997, and subsequent Orders, decisions, consent decrees, rules, and regulations including 47 C.F.R. 20.18 which are incorporated by reference in these rules. The FCC Order and regulations may be obtained free of charge from the FCC website: <http://transition.fcc.gov/pshs/services/911-services/>, <http://www.fcc.gov/encyclopedia/9-1-1-and-e9-1-1-services> and <http://www.fcc.gov/encyclopedia/rules-regulations-title-47>.
- (18) "Geographic Information Systems (GIS)" means computer programs linking features seen on maps, such as roads, town boundaries, water bodies, with related information including type of road surface, population, type of agriculture, type of vegetation, or water quality information.
- (19) "GIS Base Map" means a map comprising streets and centerlines used in a Geographic Information System.
- (20) "Logging Voice Recorder" means a device that records voice conversations and automatically logs the time and date of such conversations; normally, a multichannel device that keeps a semi-permanent record of operations.
- (21) "Notification" means the time at which a 911 call is received and acknowledged at a PSAP.
- (22) "Operations Room" means the room in the PSAP where 911 calls are received and processed and communications with emergency response personnel are conducted.
- (23) "Phase I Wireless Enhanced 911 Service" has the same meaning as provided in the FCC Order and FCC regulations. The FCC Order and regulations may be obtained free of charge from the FCC website: <http://transition.fcc.gov/pshs/services/911-services/>, <http://www.fcc.gov/encyclopedia/9-1-1-and-e9-1-1-services> and <http://www.fcc.gov/encyclopedia/rules-regulations-title-47>.
- (24) "Phase II Wireless Enhanced 911 Service" has the same meaning as provided in the FCC Order and FCC regulations, as defined in Item (16) of this Rule.
- (25) "Place of Primary Use" has the same meaning as provided in the Mobile Telecommunications Sourcing Act, 4 U.S.C. 124(8), if applicable; and otherwise sourcing shall be determined pursuant to G.S. 105-164.3 or G.S. 105-164.4B.
- (26) "PSAP Nonrecurring Costs" means non-repetitive charges incurred by a Primary PSAP to pay for equipment or services that do not occur on a fixed schedule. Examples include computer equipment that has become functionally outdated, software upgrades, or repair costs that are not covered by any maintenance agreement.
- (27) "PSAP Recurring Costs" means repetitive charges incurred by a primary PSAP, such as database management, lease of access lines, lease of equipment, network access fees, and applicable maintenance costs.
- (28) "Public Safety Agency" means an organization that provides law enforcement, emergency medical, fire, rescue, communications, or related support services.
- (29) "Public Safety Answering Point (PSAP)" means the public safety agency that receives incoming 911 calls.
- (30) "Selective Routing" or "Tandem Routing" means routing a 911 call to the designated PSAP based upon the caller's location.
- (31) "Service provider" means an entity that provides voice communications service, including resellers of such service.
- (32) "Standard" shall refer to and include such standards, policies, and procedures adopted by the Board pursuant to authority found in Article 3 of Chapter 62A of the N.C. General Statutes.



- (33) "Standard Operating Procedures (SOPs)" means written organizational directives that establish or prescribe specific operational or administrative methods that are to be followed for the performance of designated operations or actions.
- (34) "Stored Emergency Power Supply System (SEPSS)" means a system consisting of a Uninterruptible Power Supply, or a motor generator, powered by a stored electrical energy source, together with a transfer switch designed to monitor preferred and alternate load power source and provide desired switching of the load, and all necessary control equipment to make the system functional.
- (35) "Sworn Invoice" means an invoice prepared by a CMRS service provider's vendor that describes the goods or services and identifies the costs that the CMRS service provider submits for cost recovery pursuant to an approved cost recovery plan, and that is accompanied by an affidavit that complies with a form provided by the Board.
- (36) "Telecommunicator" means any person engaged in or employed as a full-time or part-time 911 communications center call taker, whether called by that or another term, such as emergency communications specialist or emergency dispatcher.
- (37) "Uninterruptible Power Supply (UPS)" means a system designed to provide power, without delay or transients, during any period when the primary power source is incapable of performing.
- (38) "Voice Communication Channel" means a single path for communication by spoken word that is distinct from other parallel paths.

*History Note:* Authority G.S. 62A-42; 47 C.F.R. 20.18;  
Eff. July 1, 2016.

#### **09 NCAC 06C .0104 FAILURE TO COMPLY WITH RULES**

If the Board determines that a PSAP or CMRS service provider is not adhering to an approved plan or is not using funds in the manner prescribed in these Rules or G.S. 62A, the Board may, after notice and hearing, take action authorized by G.S. 62A affecting distributions or reimbursements until satisfactory evidence of compliance is provided to the Board.

*History Note:* Authority G.S. 62A-42; 62A-46; 62A-48;  
Eff. July 1, 2016.

#### **09 NCAC 06C .0105 SERVICE PROVIDER FAILURE TO COMPLY WITH RULES**

(a) If the Board determines that a service provider does not appear to have complied with G.S. Chapter 62A, these Rules, or the requirements of the FCC Order, a certified, return receipt letter shall be mailed to the company representative known to the Board. The letter shall request justification or an explanation from the service provider for the apparent non-compliance. The service provider shall have 15 calendar days to respond to the letter.

(b) Board staff shall send a report to the Board. The Board shall review the staff's report. If it appears to the Board that the service provider has failed to comply with applicable law, these Rules, or the FCC Order, the Board shall notify the service provider to that effect and to the consequences arising from such failure, and shall provide an opportunity for the service provider to appear before the Board.

(c) If the non-compliant service provider is a CMRS service provider eligible for reimbursement pursuant to G.S. 62A-45, all reimbursements shall be suspended until compliance with applicable law, these Rules, or the FCC Order has been completed.

(d) If after notice and hearing, the Board determines that the service provider's failure was caused by one or more primary PSAPs, Rule .0106 and procedures regarding PSAP compliance shall be followed.

*History Note:* Authority G.S. 62A-42; 62A-48; Part 20 of Title 47 of the Code of Federal Regulations;  
Eff. July 1, 2016.

#### **09 NCAC 06C .0106 PSAP FAILURE TO COMPLY WITH RULES**

(a) If the Board determines that a Primary PSAP does not appear to have complied with G.S. 62A, these Rules, or the requirements of FCC Order, a certified, return receipt letter shall be mailed to the PSAP representative known to the Board. The letter shall request justification or an explanation from the Primary PSAP for the apparent non-compliance. The Primary PSAP shall have 15 calendar days to respond to the letter.

(b) Board staff shall send a report to the Board. The Board shall review the staff's report. If it appears to the Board that the PSAP has failed to comply with applicable law, these Rules, or the FCC Order, the Board shall notify the PSAP to that effect and to the consequences arising from such failure, and shall provide an opportunity for the PSAP to appear before the Board.

(c) If after notice and hearing, the Board determines that the Primary PSAP is not at fault, the Board shall investigate to determine the cause of failure and take action to achieve a reasonable solution. A "reasonable solution" shall be defined as one that complies with applicable law, these Rules, or the FCC Order within 30 days or upon such other conditions as the Board may find reasonable.

*History Note:* Authority G.S. 62A-46; 62A-48;  
Eff. July 1, 2016.

#### **09 NCAC 06C .0107 REVIEW 911 FUNDS EXPENDITURES, DISBURSEMENTS AND REIMBURSEMENTS**

(a) PSAPs shall maintain books and records of 911 Funds received and use of such funds in accordance with the Local Government Budget and Fiscal Control Act G.S. 159-7 et seq. PSAPs shall maintain these books and records to support Fund distributions, reviews, or audits, in accordance with the funding formula adopted by the Board pursuant to G.S. 62A-46(a)(3). All books and records shall be available for review by the Board or its representatives, or audit by other governmental entities with such authority. If any review or audit indicates excess distributions to a PSAP, the Board shall adjust future or final distributions otherwise due. If no distributions are due and owed to a PSAP, or if the excess distribution exceeds the amount otherwise due during that fiscal year, the PSAP shall refund all amounts due to the 911 Fund as requested by the Board.

(b) PSAPs shall provide copies of any audit reports to the Board if such audit reports include receipts or expenditures for 911 systems.

(c) CMRS service providers subject to G.S. 147-64.7 shall maintain records related to service charges remitted, and records necessary to support requested reimbursements in accordance with applicable law and generally accepted accounting principles. If any audit or review indicates excess distributions to a CMRS service provider, or subcontractor, the Board shall adjust future or final distributions otherwise due. If no distributions are due and owed to a CMRS service provider, or if the excess distribution exceeds the amount otherwise due during that fiscal year, the CMRS service provider shall refund all amounts that may be due to the 911 Fund.

*History Note:* Authority G.S. 62A-42(a)(5); 62A-46(d); 62A-46(e); 62A-48; 62A-50;  
Eff. July 1, 2016.

#### **09 NCAC 06C .0108 WAIVER OF RULES**

Upon receipt of a written request to waive a rule, the Board shall consider the request and may waive any rule in this Chapter. The factors the Board shall use in determining whether to grant a waiver are:

- (1) Whether the requested waiver is consistent with Article 3 of Chapter 62A or other North Carolina Statutes;
- (2) Whether any applicable Rule should be amended;
- (3) Costs to the 911 Fund if the waiver is granted;
- (4) Costs to the party requesting a waiver if the waiver is not granted;
- (5) Whether granting the waiver is consistent with the statewide 911 plan;
- (6) The benefit to the public;
- (7) Whether granting the waiver is consistent with the requirements and intent of the FCC Order;
- (8) Prior, concurrent, or similar waiver requests; and
- (9) Whether the waiver is supported or opposed by PSAPs or service providers.

*History Note:* Authority G.S. 62A-42; 150B-19(6);  
Eff. July 1, 2016.

#### **09 NCAC 06C .0109 HEARINGS**

(a) The following, if aggrieved pursuant to G.S. 62A in connection with any action by the Board, may request a hearing before the Board:

- (1) A PSAP; or
- (2) A service provider.

(b) A request for a hearing shall be made in writing to the Executive Director of the Board and shall be filed within 30 calendar days after the aggrieved party knows or should have known of the facts giving rise to the request. A request for hearing is considered filed when physically received by the Executive Director. Requests filed after the 30 calendar day period shall not be considered. To expedite handling of requests, the envelope shall be labeled "911 Funds Request for Hearing." The written request shall include the following:

- (1) The name and address of the party;
- (2) The action of the Board;
- (3) A statement of reasons for the hearing; and
- (4) Supporting exhibits, evidence, or documents necessary to substantiate the party's complaint.

Requests for hearing shall be sent to the Executive Director at the address listed in .0102 of this Section.

(c) Following review of the information set forth in Paragraph (b) of this Rule, if the Board determines it needs additional information, it shall request the information from the aggrieved party. Any additional information requested by the Board shall be submitted at the address listed in Rule .0102 of this Section within the time periods established by this Paragraph in order to expedite consideration of the request. Failure of the aggrieved party to comply with a request for information by the Board within 60 days shall result in resolution of the request without consideration of that information.

(d) A decision on a request shall be made by the Board within 120 days after receiving all relevant requested information.

*History Note: Authority G.S. 62A-42; 62A-48;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0110 DECLARATORY RULINGS**

(a) Any request for a determination regarding the application of a rule, statute, or order established by the 911 Board to a specific factual situation shall be directed to the Board Chair or Executive Director at the address in Rule .0102 of this Section. The request for a ruling shall follow Rules .0109 through .0114 of this Section. A declaratory ruling proceeding may include written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request.

(b) Declaratory rulings pursuant to G.S. 150B-4 shall be issued by the Board only on the validity of a rule or on the applicability of a statute, rule, or order of the Board to stipulated facts. A declaratory ruling shall not be issued on a matter requiring an evidentiary proceeding.

(c) A person aggrieved must possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling in order to comply with statutory requirements, rules, or standards shall be apparent from the petition and shall be explained therein.

*History Note: Authority G.S. 62A-42(a)(4); 62A-46(e)(5); 150B-4;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0111 REQUESTS FOR DECLARATORY RULINGS**

(a) Requests for a declaratory ruling shall be in writing and dated.

(b) The request shall contain:

- (1) The petitioner's name, address, and telephone number;
- (2) The rule, statute, or order referred to;
- (3) A statement of facts supporting the petitioner's request for a declaratory ruling;
- (4) A statement of the manner in which the petitioner is aggrieved by the rule, statute, or standard, or its potential application to the petitioner;

(c) After review of the information required in Paragraph (b) of this Rule, the Board may request the following additional information:

- (1) A statement of any legal authorities that support the interpretation of the given statute or rule by the petitioner;
- (2) A statement of the practices or procedures likely to be affected by the requested declaratory ruling and the persons likely to be affected by the ruling;
- (3) A draft of the declaratory ruling sought by the petitioner, if a specified outcome is sought by the petitioner; and
- (4) A statement of whether the petitioner desires to present oral argument.

*History Note:* Authority G.S. 62A-42; 150B-4;  
Eff. July 1, 2016.

**09 NCAC 06C .0112 RESPONSE TO A REQUEST FOR A DECLARATORY RULING**

- (a) The Board shall consider the request within 30 days of receipt. The Board shall issue a ruling except:
- (1) When the Board finds that the person making the request is not a "person aggrieved," as defined in G.S. 150B-2(6);
  - (2) When the petition does not provide the information required in Rule .0111 of this Section, the question is presented in such a manner that the Board cannot determine what the question is, or that the Board cannot respond with a specific ruling that shall be binding on all parties;
  - (3) When the Board has made a determination in a similar contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
  - (4) Where the subject matter of the request is involved in pending litigation or contested case in any state or federal court in North Carolina.
- (b) The Board shall, not later than the 30th day after receiving such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the Board's decision to grant or deny the request. The Board may rule at any meeting convened to consider the request, or defer the ruling until a later date, but not later than the 45<sup>th</sup> day after granting the request for a ruling. The Board may gather additional information, give notice to other persons, and permit such other persons to submit information or arguments under such conditions as are set forth in any notice given to the requesting party.

*History Note:* Authority G.S. 62A-42; 150B-4;  
Eff. July 1, 2016.

**09 NCAC 06C .0113 DURATION OF A DECLARATORY RULING**

For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) The portion of the statute, rule, or order interpreted by the declaratory ruling is amended or repealed;
- (2) The Board changes the declaratory ruling prospectively; or
- (3) Any court sets aside the ruling.

*History Note:* Authority G.S. 62A-42; 150B-4(a);  
Eff. July 1, 2016.

**09 NCAC 06C .0114 RECORD OF RULING**

A record of all declaratory ruling proceedings shall be maintained at the Board's office and shall be available for public inspection during business hours.

*History Note:* Authority G.S. 62A-42; 150B-4;  
Eff. July 1, 2016.

**SECTION .0200 – PUBLIC SAFETY ANSWERING POINTS (PSAPS)**

**09 NCAC 06C .0201 PSAP ELIGIBILITY**

- (a) Before receiving distributions from the 911 Fund, a primary PSAP shall meet the following criteria and confirm in writing to the Board:
- (1) The PSAP is separately identified in its governing agency's budget and in any audit conducted under the Local Government Budget and Fiscal Control Act.
  - (2) The PSAP meets the definition of primary PSAP under G.S. 62A-40. Callers shall be able to reach the PSAP by placing a call using only the digits 911. The PSAP shall operate an Enhanced 911 system.
- (b) The PSAP equipment vendor or a service provider operating in the PSAP's jurisdiction shall also certify that the PSAP is capable of receiving and dispatching Phase I wireless Enhanced 911 service. If neither an equipment vendor nor a service provider is available, a city or county may use certification from a technology specialist who demonstrates compliance with FCC regulation 47 C.F.R. 20.18.

(c) The PSAP shall provide copies of all documentation evidencing agreements with other PSAPs governing the manner in which 911 Funds are used in overlapping geographic service areas, as identified by zip code or other identifier such as telephone exchange or township.

*History Note: Authority G.S. 62A-46;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0202 PSAP ELIGIBLE EXPENSES**

(a) Expenses that are solely incurred to enable a PSAP to receive and utilize the voice and data elements necessary for wireline 911 and wireless Phase I or Phase II compliance may be fully paid from a PSAP's 911 Fund distributions if approved by the Board. A PSAP may submit a request for approval for an expense by identifying the expense item together with an explanation of the necessity of the expense item to the Executive Director.

- (1) Eligible costs for necessary computer hardware include Computer Aided Dispatch (CAD) workstation computers, servers, and ancillary equipment; GIS workstation computers, servers, and ancillary equipment; and voice logging recorder computers;
- (2) Eligible costs for necessary computer software include software used in conjunction with the computer hardware to provide callers with access to the PSAP by dialing 911;
- (3) Database provisioning includes creation of the automatic location identification (ALI) database and the GIS base map database;
- (4) GIS base map eligible expenses include mapped street centerlines, together with costs for creation and maintenance of the base map;
- (5) Nonrecurring costs of establishing a wireless Enhanced 911 system include emergency generator or uninterruptible power supplies, and telecommunicator furniture necessary for 911 system operation; and
- (6) Rates associated with local telephone companies' charges related to the operation of the 911 system include monthly charges for delivery of 911 calls, automatic number identification (ANI), ALI, and monthly charges for telephone interpreter services.

(b) Eligible lease, purchase, and maintenance expenses for emergency telephone equipment include 911 telephone equipment/system costs.

The 911 Board shall publish on its website <https://www.nc911.nc.gov/> and periodically revise a list of approved eligible expenditures.

(c) Ineligible costs include:

- (1) Basic termination charges incurred due to the disconnection of telephone equipment to be replaced with 911 equipment;
- (2) Capital outlay expenditures, such as buildings, remodeling, communication towers, and equipment not directly related to providing the user of a voice communications service connection access to a PSAP by dialing the digits 911;
- (3) Mobile or base station radios, pagers, or other devices used for response to, rather than receipt of, 911 calls, including mobile data terminals (MDT) and automatic vehicle location (AVL) systems used in response vehicles;
- (4) Seven-digit transfer-to-lines;
- (5) Private line circuit costs;
- (6) Directory listings; and
- (7) Maintenance costs for radio equipment or other miscellaneous equipment not necessary, as determined by the Board and the affected PSAP, to provide the user of a voice communications service connection access to a PSAP by dialing the digits 911.

*History Note: Authority G.S. 62A-46(c);  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0203 EFFECT OF 911 FUND DISTRIBUTION TERMINATIONS AND SUSPENSIONS**

(a) A primary PSAP operated by or for a local government that is not identified or included in its governing agency's budget or in any audit conducted pursuant to the Local Government Budget and Fiscal Control Act shall not be eligible for distributions from the 911 Fund.

(b) 911 Fund distributions that lapse due to termination of a primary PSAP shall be re-allocated by the Board.

(c) 911 Fund distributions that are suspended shall be maintained by the Board until such time as the PSAP entitled to such distributions complies with the requirements of applicable statutes, these Rules, and the Board's standards, policies, and procedures.

(d) Primary PSAPs that cease independent operation due to consolidation with other such PSAPs, or that are consolidated with newly formed PSAPs, shall give notice to the Board. 911 Fund distributions for such PSAPs that cease operations shall revert to the 911 Fund for distribution under G.S. 62A-46.

*History Note: Authority G.S. 62A-46; 62A-48;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0204 PSAP REPORTING**

(a) PSAPs shall submit the following to the Board by September 1 of each year:

- (1) A copy of the PSAP's governing agency's approved budget;
- (2) A report detailing the revenues and expenditures associated with the operation of its 911 system; and
- (3) Additional information if requested by the Board including installation schedules, installation expenses, anticipated 911 system changes, other system related costs, expenses and other information deemed necessary by the Board or by the PSAP to ensure funding in compliance with G.S. 62A-46(e).

(b) If a PSAP fails to report its revenues and expenditures, the Board shall inform the PSAP's governing agency. The notice shall also inform the governing agency that failure to provide the requested information within 15 days shall be cause for suspension of monthly PSAP fund distributions until the information is received. The notice shall further inform the governing agency that continuing failure to provide the information shall result in a report to the North Carolina Local Government Commission of the PSAP's failure.

(c) After 60 days from September 1 the Board shall inform the North Carolina Local Government Commission in writing of the PSAP's failure to respond to the requested information. A copy of the notice to the North Carolina Local Government Commission shall also be sent to the PSAP manager and the governing agency.

(d) Each county or municipality shall submit a list of PSAPs operating within its jurisdiction each year; or, if none are known, a statement to that effect.

*History Note: Authority G.S. 62A-4; 62A-46; 62A-49;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0205 COMPREHENSIVE EMERGENCY MANAGEMENT PLAN (CEMP)**

(a) Each PSAP shall have a written Comprehensive Emergency Management Plan (CEMP) that includes:

- (1) An emergency fire plan;
- (2) A damage control plan; and
- (3) A back-up PSAP plan that includes alternate 911 call routing conforming to 47 C.F.R. 20.18 and G.S. 62A-49.

(b) The PSAP shall test the plans in Paragraph (a) of this Rule and the CEMP at least once annually.

*History Note: Authority G.S. 62A-42; 62A-46; 47 C.F.R. 20.18;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0206 BACK-UP PSAPS**

(a) Each Primary PSAP shall establish a back-up PSAP or have an arrangement for back-up provided by another PSAP. Agencies may also pool resources and create regional back-up centers. Alternate methods for receiving and processing 911 calls may include interlocal agreements among one or more PSAPs for sharing physical resources, entail a use of portable equipment that may be implemented wherever secure network connectivity is accessible, construction and maintenance of a back-up PSAP facility that would only be utilized when the Primary PSAP is inoperable, or other alternative solution.

(b) Back-up Plan. There shall be a local management approved, written, dated, and annually tested back-up PSAP plan.

(c) The Board shall disburse 911 Funds for back-up PSAPs to the extent eligible expenses are incurred for such PSAPs, and provided:

- (1) A back-up PSAP plan is submitted to the 911 Board. The plan shall include start-up costs, projected recurring expenses, and any local agreements which may exist, or which are anticipated, that provide for the back-up PSAP.
- (2) Any back-up PSAP plan revisions have been provided to the 911 Board staff.
- (d) The back-up PSAP shall be capable, when staffed, of performing the emergency functions performed at the primary PSAP.
- (e) The back-up PSAP shall be separated geographically from the primary PSAP at a distance that ensures the survivability of the alternate center.
- (f) Each PSAP shall develop a formal written plan to maintain and operate the back-up PSAP or, if back-up is provided by another PSAP, a formal written plan that defines the duties and responsibilities of the alternate PSAP.
  - (1) The plan shall include the ability to reroute incoming 911 call traffic to the back-up center and to process and dispatch 911 calls at that center.
  - (2) The plan shall be included in the Comprehensive Emergency Management Plan (CEMP).
- (g) The PSAP shall be capable of operation long enough to enable the transfer of operations to the back-up PSAP in the event of an emergency in the PSAP or in the building that houses the PSAP.

*History Note: Authority G.S. 62A-42(a);  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0207 PSAP OPERATIONS AND MANAGEMENT**

- (a) Personnel:
  - (1) PSAP equipment and systems shall be under the oversight of an employee or employees of the PSAP.
  - (2) The PSAP Emergency services dispatching entities shall have trained and qualified technical assistance available for trouble analysis and repair by in-house personnel or by authorized outside contract maintenance services. Where maintenance is provided by an organization or person other than an employee of the PSAP, written records of all installation, maintenance, test, and extension of the system shall be forwarded to the responsible employee of the PSAP. Maintenance performed by an organization or person other than an employee of the PSAP shall be by written contract that contains a guarantee of performance.
  - (3) Maintenance personnel other than an employee of the PSAP shall be approved by the PSAP pursuant to its access controls as presenting no threat to the security of the facility or the employees and equipment within it.
  - (4) All equipment shall be accessible to the PSAP for the purpose of maintenance.
  - (5) When a device monitoring the 911 system for integrity indicates that trouble has occurred, the telecommunicator shall act as follows:
    - (A) Take appropriate steps as provided in the PSAP manual or operating procedures to repair the fault.
    - (B) If the telecommunicator determines repair is not possible, isolate the fault and notify the official responsible for maintenance.
- (b) Time.
  - (1) The clock for the main recordkeeping device in the PSAP shall be synchronized with all timekeeping devices in the 911 system.
  - (2) All timekeeping devices in the PSAP shall be maintained within  $\pm 5$  seconds of the main recordkeeping device clock.
- (c) Recording.
  - (1) PSAPs shall have a logging voice recorder with one channel for each of the following:
    - (A) Transmitted or received emergency radio channel or talk group;
    - (B) Voice dispatch call for service circuit; and
    - (C) Telecommunicator telephone that receives emergency 911 calls for service.
  - (2) Each Telecommunicator workstation shall have the ability to recall telephone and radio recordings from that workstation without delay.
  - (3) 911 calls that are transmitted over the required dispatch circuit(s) shall be automatically recorded, including the dates and times of transmission.
- (d) Quality Assurance/Improvement.

- (1) PSAPs shall establish a quality assurance/improvement process to ensure the consistency and effectiveness of 911 call taking.
- (2) Statistical analysis of 911 call taking shall be completed monthly and compiled over a one year period and retained as operational records under Rule .0215 of this Section.

*History Note:* Authority G.S. 62A-42(a)(4); 62A-46(e); 62A-46(a)(3);  
Eff. July 1, 2016.

#### **09 NCAC 06C .0208 TELECOMMUNICATOR QUALIFICATIONS, TRAINING AND STAFFING**

- (a) There shall be sufficient telecommunicators available to complete the call taking process for 911 calls.
- (b) Where communications systems, computer systems, staff, or facilities are used for both emergency and non-emergency functions, the non-emergency use shall not delay use of those resources for 911 operations.
- (c) 911 calls for service and completing the call taking process shall have priority above nonemergency activities.
- (d) The PSAP shall provide standard operating procedures to its telecommunicators.
- (e) Telecommunicators shall not be assigned any duties prohibiting them from receiving 911 calls and completing the call taking process in accordance with Rule .0209(a) of this Section and the PSAP standard operating procedures.

*History Note:* Authority G.S. 62A-42(a)(4);  
Eff. July 1, 2016.

#### **09 NCAC 06C .0209 PSAP 911 CALL OPERATING PROCEDURES**

- (a) Ninety percent of 911 calls received on emergency lines shall be answered within 10 seconds, and 95 percent of 911 calls received on emergency lines shall be answered within 20 seconds. The PSAP and the Board shall evaluate call answering times monthly by using data from the previous month.
- (b) When 911 calls need to be transferred to another PSAP, the telecommunicator shall transfer the call without delay. The Telecommunicator shall advise the caller of the transfer. The telecommunicator shall maintain the call connection until it is certain that the transfer is complete and verified by the agency receiving the call transfer.
- (c) An indication of the status of all Emergency Response Units shall be available to Telecommunicators at all times.
- (d) The PSAP shall establish and maintain standard operating procedures including:
  - (1) The procedures shall specify that the telecommunicator is expected to perform without direct supervision;
  - (2) The procedures shall specify operations, facilities, and communications systems that receive 911 calls from the public;
  - (3) An implementation plan for testing and fail-over operation to a back-up PSAP pursuant to Rule .0206 of this Section;
  - (4) Procedures related to the CEMP required in Rule .0205 of this Section;
  - (5) Emergency response personnel emergencies;
  - (6) Activation of an emergency distress function;
  - (7) Assignment of incident radio communications plan;
  - (8) Time limit for acknowledgment by units that have been dispatched;
  - (9) Responding to and processing TDD /TTY calls or other calls from hearing impaired callers;
  - (10) Providing requirements for dispatching of appropriate emergency response personnel;
  - (11) A policy that limits access to the PSAP to authorized personnel;
  - (12) Procedures for answering open-line or "silent calls"; and
  - (13) Maintaining training records for each employee required by the PSAP.

*History Note:* Authority G.S. 62A-42(a)(4);  
Eff. July 1, 2016.

#### **09 NCAC 06C .0210 PUBLIC SAFETY ANSWERING POINT (PSAP) FACILITIES**

- (a) All 911 system equipment, software, and services used in the operation of the PSAP shall be implemented and maintained to ensure continuity of 911 call taking.
  - (1) Systems that are essential to the operation of the PSAP shall be designed to accommodate peak workloads.



- (2) PSAPs shall be designed to accommodate the staffing level necessary to accommodate peak workloads.
- (b) Primary and secondary power sources shall be determined by the PSAP including the following provisions:
  - (1) At least two independent and reliable power sources, one primary and one secondary, shall be provided. Each shall be of adequate capacity for operation of the PSAP.
  - (2) Power sources shall be monitored for integrity, with annunciation provided in the operations room.
  - (3) Primary Power Source. One of the following shall supply primary power:
    - (A) A feed from a commercial utility distribution system;
    - (B) An engine-driven generator installation or equivalent designed for continuous operation, with a person specifically trained in its operation on duty at all times; or
    - (C) An engine-driven generator installation or equivalent arranged for cogeneration with commercial light and power, with a person specifically trained in its operation on duty or available at all times.
  - (4) Secondary Power Source.
    - (A) The secondary power source shall consist of one or more standby engine-driven generators. The PSAP shall ensure that a person specifically trained in its operation is on duty or available at all times.
    - (B) Upon failure of primary power, transfer to the standby source shall be automatic.
  - (5) Engine-driven generators shall be sized to supply power for the operation of all functions of the PSAP.
    - (A) When installed indoors, engine-driven generators shall be located in a ventilated and secured area that is separated from the PSAP by fire barriers having a fire resistance rating of at least two hours.
    - (B) When installed outdoors, engine-driven generators shall be located in a secure enclosure.
    - (C) The area that houses an engine-driven generator shall not be used for storage other than spare parts or equipment related to the generator system.
    - (D) Fuel to operate the engine-driven generator for a minimum of 24 hours at full load shall be available on site.
    - (E) Equipment essential to the operation of the generator shall be supplied with standby power from the generator.
    - (F) Generators shall not use the public water supply for engine cooling.
  - (6) A Stored Emergency Power Supply System (SEPSS) shall be provided for telecommunications equipment, two-way radio systems, computer systems, and other electronic equipment determined to be essential to the operation of the PSAP.
    - (A) The SEPSS shall be of a class that is able to maintain essential operations long enough to implement the formal Comprehensive Emergency Management Plan.
    - (B) The instrumentation required to monitor power shall be remotely annunciated in the operations room.
  - (7) Power circuits shall include their associated motors, generators, rectifiers, transformers, fuses, and controlling devices.
  - (8) The power circuit disconnecting means shall be installed so that it is accessible only to authorized personnel.
  - (9) Surge Arresters otherwise known as Transient Voltage Surge Suppression (TVSS) shall be provided for protection of telecommunications equipment, two-way radio systems, computers, and other electronic equipment essential to the operation of the PSAP.
  - (10) Isolated Grounding System. Telecommunications equipment, two-way radio systems, computers, and other electronic equipment essential to the operation of the PSAP shall be connected to an isolated grounding system.
  - (11) Uninterruptible Power Supply (UPS) and Battery Systems. A UPS and battery system shall be installed in accordance with local, State, and the federal safety regulations and be sufficient to prevent power surges from damaging equipment in the PSAP as well as provide power for all essential 911 Emergency Center operations until the backup power source can be fully activated.
    - (A) Each UPS shall be provided with a bypass switch that maintains the power connection during switch over and that is capable of isolating all UPS components while allowing power to flow from the source to the load.
    - (B) The following UPS conditions shall be annunciated in the operations room:

- (i) Source power failure, overvoltage, and under-voltage;
  - (ii) High and low battery voltage; and
  - (iii) UPS in bypass mode.
- (C) The UPS and Battery Systems shall be capable of providing power for the PSAP when the Primary Power Source is not functioning but the duration of the outage is not sufficient to activate the Secondary Power Source.

*History Note: Authority G.S. 62A-42;  
Eff. July 1, 2016.*

**09 NCAC 06C .0211 TELEPHONES**

(a) Equipment and Operations.

- (1) PSAPS shall be equipped with telephone lines and telephone devices as follows:
  - (A) A minimum of two 911 telephone lines and 911 telephone devices shall be assigned exclusively for receipt of 911 calls. These lines shall appear on at least two telephone devices within the PSAP.
  - (B) Additional 911 telephone lines and 911 telephone devices shall be provided as necessary for the volume of calls handled by the PSAP.
  - (C) Additional telephone lines shall be provided for the normal business (non-emergency) use as needed.
  - (D) At least one outgoing-only line and telephone device shall be provided.
- (2) 911 lines and 911 telephone devices shall be answered prior to non-emergency telephone lines and non-emergency telephone devices.
- (3) When all 911 telephone lines and 911 telephone devices are in use, y 911 calls shall be routed to other predetermined telephone lines and telephone devices that shall be monitored for integrity, and that are approved by the PSAP.
- (4) Calls to the business number shall not hunt to the designated emergency lines.
- (5) When transferring a 911 call pursuant to Rule .0209(b) of this Section, the PSAP shall transfer the call data to the designated PSAP when possible. If the call transfer is not possible, call data shall be relayed by the telecommunicator.
- (6) All 911 calls shall be recorded.

(b) Circuits/Trunks.

- (1) PSAPS shall have at least two 911 call delivery paths with diverse routes arranged so that no single incident interrupts both routes.
- (2) Where multiple PSAPs that serve a jurisdiction are not located in a common facility, at least two circuits with diverse routes, arranged so that no singular incident interrupts both routes, shall be provided between PSAPs.
- (3) The PSAP shall have sufficient 911 trunk capacity to receive 99.9 percent of all calls during the busiest hour of the average week of the busiest month of the year.

*History Note: Authority G.S. 62A-42;  
Eff. July 1, 2016.*

**09 NCAC 06C .0212 DISPATCHING SYSTEMS**

- (a) A 911 call dispatching system shall be designed, installed, operated, and maintained to provide for the receipt and retransmission of calls.
- (b) Telecommunicators who receive 911 calls shall have redundant means within the PSAP premises to dispatch calls.
- (c) The failure of any system component or one dispatching means shall not affect the operation of another dispatching means.

*History Note: Authority G.S. 62A-42;  
Eff. July 1, 2016.*

**09 NCAC 06C .0213 COMPUTER AIDED DISPATCHING (CAD) SYSTEMS**

(a) PSAPs shall use computer-aided dispatching (CAD) systems. The CAD system shall contain all hardware and software components necessary for interface with the 911 system.

- (1) The CAD system shall include data entry; resource recommendations, notification, and tracking; store records relating to all 911 calls and all other calls for service and status changes; and track those resources before, during, and after emergency calls, preserving records of those 911 calls and status changes for later analysis by the PSAP.
- (2) The CAD system shall include a data backup system, utilizing either removable media or independent disk storage arrays dedicated to the backup task and additional equipment as needed, as determined by the PSAP.
- (3) The failure of any single component shall not disable the entire system.
  - (A) The CAD system shall provide automatic switchover in case of failure of the required system component(s).
  - (B) Manual intervention by telecommunicators or others shall not be required.
  - (C) Notwithstanding automatic switchover, the CAD system shall provide the capability to manually initiate switchover.
  - (D) CAD systems that utilize server and workstation configuration shall accomplish automatic switchover by having a duplicate server available with access to all the data necessary and required to restart at the point where the primary server stopped.
  - (E) CAD systems that utilize distributed processing, with workstations in the operations room also providing the call processing functions, shall be considered to meet the requirements of automatic switchover, as long as all such workstations are continuously sharing data and all data necessary to pick up at the point where the failed workstation stopped are available to all other designated dispatch workstations.
- (4) The system shall continuously monitor the CAD interfaces for equipment failures, device exceptions, and time-outs. Upon detection of faults or failures, the system shall send an appropriate message consisting of visual and audible indications to personnel designated by the PSAP. A log of system messages and transactions shall be generated and maintained as determined by the PSAP.

(b) PSAPS shall maintain a secondary CAD for use in the event of a failure of the CAD system.

(c) Operation of the CAD system software shall be limited to authorized personnel by log-on/password control, workstation limitations, or other means as required by the PSAP.

(d) The PSAP shall provide network isolation necessary to preserve bandwidth for the efficient operation of the CAD system and processing of 911 calls.

(e) The CAD system shall have the capability to allow 911 call data exchange between the CAD system and other CAD systems, and between the CAD system and other systems.

(f) CAD configurations shall include:

- (1) Recommending units for assignment to calls.
  - (A) Ensuring that the optimum response units are selected.
  - (B) Allowing the telecommunicator to override the CAD recommendation for unit assignment.
  - (C) The CAD system shall have the ability to prioritize all system processes so that emergency operations take precedence.
- (2) Detecting and reporting errors, faults or failures.
- (3) The CAD system shall include automatic power-fail recovery capability.

*History Note: Authority G.S. 62A-42;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0214 TESTING**

(a) Tests and inspections of all systems necessary for receiving 911 calls and completing the call taking process shall be made at the intervals specified in a PSAP standard operating procedures conforming to Rules .0207, .0209, and .0210 of this Section.

(b) All equipment shall be restored to operating condition after each test or 911 call for which the equipment functioned.

(c) When tests detect failure or poor performance anywhere on the system, the PSAP shall take appropriate steps to repair or isolate the failure or poor performance and notify the person(s) responsible for repair or maintenance.

(d) All new equipment shall be tested in accordance with the manufacturers' specifications and accepted PSAP practices before being placed in service. PSAPs shall provide equipment operation manuals for operations and testing procedures to PSAP personnel.

*History Note: Authority G.S. 62A-42;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0215 RECORDS**

- (a) PSAPs shall maintain records to ensure operational capability of all system functions for at least five years.
- (b) After completion of acceptance tests, the PSAP shall retain:
  - (1) A set of reproducible, as-built installation drawings;
  - (2) Operation and maintenance manuals;
  - (3) Written sequence of operation; and
  - (4) Results of all operational tests and values at the time of installation.
- (c) PSAPs shall have access to site-specific software for software-based systems.
- (d) Operational Records.
  - (1) Call and dispatch performance statistics shall be compiled and maintained by the PSAP.
  - (2) Statistical analysis for call and dispatch performance measurement shall be done monthly and compiled over a one year period. A management information system (MIS) program shall track incoming 911 calls and dispatched 911 calls and provide real-time information and strategic management reports.
  - (3) Records of the following, including the corresponding dates and times, shall be kept:
    - (A) Test, 911 call, and dispatch signals;
    - (B) Circuit interruptions and observations or reports of equipment failures; and
    - (C) Abnormal or defective circuit conditions indicated by test or inspection.
- (e) Maintenance Records.
  - (1) Records of maintenance, both routine and emergency, shall be kept for all 911 call receiving equipment and 911 call dispatching equipment.
  - (2) All maintenance records shall include the date, time, nature of maintenance, and repairer's name and affiliation.

*History Note: Authority G.S. 62A-42;  
Eff. July 1, 2016.*

#### **09 NCAC 06C .0216 ASSESSING PSAP OPERATIONS**

- (a) The Board shall conduct annual reviews of PSAP operations to determine whether a PSAP meets the requirements of Section .0200 of these Rules. Reviews shall be conducted by at least two persons selected by the Board based on each person's knowledge and experience of 911 systems and PSAP operations. The Board shall provide notice to a PSAP at least 90 days in advance of a review. The notice shall include the scope of the review and shall identify the reviewers.
- (b) A written report shall be provided to a PSAP within 30 days of the date of review. The report shall state any deficiencies that identify a failure to fulfill the requirements of Section .0200 of these Rules.
- (c) The report shall include procedures and recommendations to remediate the identified deficiencies. PSAPs shall respond to the report no more than 30 days following receipt and identify actions taken or planned to remediate deficiencies.
- (d) Notwithstanding the annual review in Paragraph (a) of this Rule, a PSAP having no deficiencies or remediating deficiencies identified within 30 days of the report delivery date shall not be subject to review for three years.

*History Note: Authority G.S. 62A-42(a)(4); 62A-42(a)(5);  
Eff. July 1, 2016.*

### **SECTION .0300 – COMMERCIAL MOBILE RADIO SERVICE (CMRS) PROVIDERS**

#### **09 NCAC 06C .0301 REGISTRATION OF CMRS SERVICE PROVIDERS**

(a) CMRS service providers or resellers of any CMRS that receive authority to serve any area within the State of North Carolina, shall register with the Board within 30 calendar days of the later of receiving authority to operate, or of beginning operations, in North Carolina.

(b) Such registration shall be filed with the Commission's Executive Secretary and shall include the following information:

- (1) The legal name of CMRS service provider;
- (2) All business names used by the CMRS service provider in North Carolina;
- (3) The name, title, mailing address, telephone number, fax number, and email address (if available) of the person to be contacted regarding 911 matters;
- (4) A listing of all areas in which the CMRS service provider is authorized to serve any portion of North Carolina; and
- (5) The FCC filer ID and FCC Registration Number of the CMRS service provider.

(c) Changes to any of the information required by Paragraph (b) of this Rule shall be filed with the Board's Executive Director within 30 calendar days of the effective date of such change(s). This filing requirement includes providing notice to the Board's Executive Director of any and all mergers, divestitures, acquisitions, or other similar actions affecting North Carolina service areas.

*History note: Authority: G.S. 62A-42(a)(9); 62A-45; 62A-49; Part 20, Title 47 Code of Federal Regulations; Eff. July 1, 2016.*

#### **09 NCAC 06C .0302 CMRS SERVICE PROVIDER REIMBURSEMENT**

(a) Sworn invoices shall be attested to by a person having authority to represent the CMRS service provider. Only costs that are commercially reasonable are eligible for cost recovery. The CMRS service provider may present costs as the actual incurred costs of the CMRS service provider, an estimate of the incurred costs, or the approved rate per subscriber multiplied by the actual subscriber count. If estimated costs are used, the CMRS service provider shall annually true up its costs to ensure that over-recovery does not occur. CMRS service providers shall maintain records consistent with Generally Accepted Accounting Principles as applied by the provider to demonstrate that costs were actually incurred as submitted for reimbursement. Internal costs (engineering time, facilities, proportionate share of software, etc.) shall be supported by documentation. All costs are subject to review by the Board.

(b) As used in this Rule, "commercially reasonable" shall mean the cost that takes into account the facts and circumstances at the time the cost is incurred. The Board shall determine whether costs are commercially reasonable pursuant to Chapter 25 of the General Statutes.

*History note: Authority G.S. 62A-45; Eff. July 1, 2016.*

#### **09 NCAC 06C .0303 RESERVED FOR FUTURE CODIFICATION**

#### **09 NCAC 06C .0304 RESERVED FOR FUTURE CODIFICATION**

#### **09 NCAC 06C .0305 REMITTANCE OF SERVICE CHARGES**

(a) Service providers shall remit service charges to the 911 Board at the address listed in Rule .0102 of this Subchapter.

(b) Service providers may remit funds by check payable to the Board, or by electronic funds transfer upon satisfaction of transaction processing requirements.

(c) Voice communications service providers that assess the service charge to resellers of their services shall remit such service charges to the Board.

(d) The Department of Information Technology Fiscal Services shall act as the receiving agent for the service providers' monthly reimbursements and as the administrator of the 911 Fund.

*History note: Authority G.S. 62A-43; 147-86.11; Eff. July 1, 2016.*

#### **09 NCAC 06C .0306 PREPAID WIRELESS SERVICE**

- (a) A voice communications service provider of prepaid wireless service is not eligible for reimbursements to CMRS providers.
- (b) Rules .0109 through .0114 of this Chapter governing hearings and declaratory rulings shall not apply to a voice communications service provider of prepaid wireless service for issues arising under the administration authority of the Department of Revenue.
- (c) Contract or other information submitted to the Board by a voice communications service provider of prepaid wireless service may be proprietary under G.S. 62A-52. Service providers shall mark any proprietary or other non-public information as such before sending to the Board.

*History Note:* Authority G.S. 62A-43; 62A-44; 62A-52; 62A-54;  
Eff. July 1, 2016.

## SECTION .0400 – GRANT FUND

### **09 NCAC 06C .0401 PSAP GRANTS**

- (a) When there are funds available, the Board shall publish a notice on its website, as set forth in Rule .0102 of this Subchapter, of grant availability to primary PSAPs and governing entities operating primary PSAPs.
- (b) Any primary PSAP or the governing entity operating a primary PSAP may apply for a grant.
- (c) Each applicant applying for grant funds shall complete and submit an application that may be obtained from the Board office or from the Board website at the address as set forth in Rule .0102 of this Subchapter.
- (d) The Board shall accept grant applications as stated in the Board's published notice of grant availability. Grant applications submitted that do not conform to the Board's published requirements may be considered at the discretion of the Board, provided that grant funds are not exhausted by conforming grant applications and the non-conforming grant applications satisfy G.S. 62A-47.
- (e) Applications for grants for each item over twenty-five thousand dollars (\$25,000) shall be accompanied by at least three written competitive quotes. The Board shall compare the three quotes to any existing State contract in order to determine appropriate funding.

*History note:* Authority G.S. 62A-47;  
Eff. July 1, 2016.

### **09 NCAC 06C .0402 GRANTS FOR CONSTRUCTION OR RENOVATION**

- (a) The requirements in this Rule, Grants for Construction or Renovation, shall apply only to new construction and construction renovations of an existing structure or facility funded by the North Carolina 911 Board. PSAPs receiving grants for construction or renovation shall ensure compliance with the provisions of this Rule.
- (b) HVAC.
  - (1) HVAC systems shall be designed to maintain temperature and relative humidity within limits specified by the manufacturer of the equipment critical to the operation of the PSAP.
  - (2) HVAC systems shall be independent systems that serve only the PSAP.
  - (3) HVAC system intakes for fresh air shall be arranged to minimize smoke intake from a fire inside or outside the building and to resist intentional introduction of irritating, noxious, toxic, or poisonous substances into the HVAC system.
  - (4) HVAC emergency controls shall be provided in the operations room to permit closing of outside air intakes.
  - (5) Back-up HVAC systems shall be provided for the operations room and other spaces housing electronic equipment essential to the operation of the PSAP.
  - (6) HVAC systems shall be designed so that the PSAP is capable of uninterrupted operation with the largest single HVAC unit or component out of service.
- (c) Fire Protection.
  - (1) The PSAP and spaces adjoining the PSAP shall be provided with an automatic fire detection, alarm, and notification system.
  - (2) The alarm system shall be monitored in the operations room.
  - (3) Operation of notification appliances shall not interfere with communications operations.
  - (4) Electronic computer and data processing equipment shall be protected in accordance with the manufacturer's recommended specifications, and common business practices.

(d) Security.

- (1) The PSAP and other buildings that house essential operating equipment shall be protected against damage from vandalism, terrorism, and civil disturbances.
- (2) Entry to the PSAP shall be restricted to authorized persons.
- (3) Exterior entryways to the PSAP shall have a security vestibule. "Security Vestibule" means comprising a compartment with two or more doors to prevent unobstructed passage by allowing the release of only one door at a time.
- (4) Door openings shall be protected by listed, self-closing fire doors that have a fire resistance rating of not less than 1 hour.
- (5) Where a PSAP has windows, the following requirements shall apply:
  - (A) Windows shall be a minimum of 4 ft (1.2 m) above floor level.
  - (B) Windows shall be rated for bullet resistance to Level 4 as defined in UL 752, Standard for Safety Bullet-Resistant Equipment, which is hereby incorporated by reference, including subsequent amendments and editions. This may be accessed at no cost at <http://ulstandards.ul.com/standard/?id=752>.
  - (C) Windows that are not bullet resistant shall be permitted provided that they face an area that cannot be accessed or viewed by the general public.
  - (D) Windows that are required to be bullet resistant shall be configured so that they cannot be opened.
  - (E) Walls with bullet-resistant windows shall be required to provide the same level of protection as the window.
- (6) Means shall be provided to prevent unauthorized vehicles from approaching the building housing the PSAP to a distance of no less than 82 ft (25 m). Alternatively, unauthorized vehicles shall be permitted to approach closer than 82 ft (25 m) if the building has been designed to be blast resistant.

(e) Lighting.

- (1) Artificial lighting shall be provided to enable personnel to perform their assigned duties.
- (2) The PSAP shall be equipped with emergency lighting that shall illuminate automatically immediately upon failure of normal lighting power.
- (3) Illumination levels shall be sufficient to allow all essential operations.

(f) Circuit Construction and Arrangement.

- (1) As-built drawings shall be provided.
- (2) Circuits shall not pass over, under, through, or be attached to buildings or property that are not owned by, or under the control of, the PSAP or the entity that is responsible for maintaining the system.
- (3) 911 call instruments installed in buildings not under control of the PSAP shall be on separate dedicated circuits.
- (4) The combination of public emergency services communication and signaling (C&S) circuits in the same cable with other circuits shall comply with the following:
  - (A) Other municipally controlled C&S circuits shall be permitted; or
  - (B) Circuits of private signaling organizations shall be permitted only by permission of the PSAP.

(g) Underground Cables.

- (1) Underground communication and signal cables shall be brought above ground only at points where the PSAP has determined there is no potential for mechanical damage or damage from fires in adjacent buildings.
- (2) All cables that are installed in manholes, vaults, and other enclosures intended for personnel entry shall be racked and marked for identification.
- (3) Cable splices, taps, and terminal connections shall be located only where accessible for maintenance and inspection and where no potential for damage to the cable due to falling structures or building operations exists.
- (4) Cable splices, taps, and terminal connections shall be made to provide and maintain levels of conductivity, insulation, and protection that are at least equivalent to those afforded by the cables that are joined.

(h) Aerial Cables and Wires. Protection shall be provided where cables and wires pass through trees, under bridges, and over railroads, and at other locations where damage or deterioration is possible.

(i) Wiring Inside Buildings.

- (1) Wiring at the PSAP shall extend to the operations room in conduits, ducts, shafts, raceways, or overhead racks and troughs of a construction type that protects against fire and mechanical damage.
- (2) Cables or wiring exposed to fire hazards shall be protected from the hazards.
- (3) At the PSAP, cable terminals and cross connecting facilities shall be located either in or adjacent to the operations room.
- (4) All wired dispatch circuit devices and instruments whose failure can adversely affect the operation of the system shall be mounted in accordance with the following:
  - (A) On noncombustible bases, pedestals, switchboards, panels, or cabinets; and
  - (B) With mounting designed and constructed so that all components are readily accessible to authorized personnel.

(j) Circuit Protection.

- (1) All protective devices shall be accessible for maintenance and inspection.
- (2) Wired surge arresters shall be designed and listed for the specific application.
- (3) Each conductor that enters a PSAP from a partial or entirely aerial line shall be protected by a surge arrester.

(k) Grounding.

- (1) Sensitive electronic equipment determined by the PSAP to be essential to the operation of telecommunications and dispatching systems shall be grounded.
- (2) Listed isolated ground receptacles shall be provided for all cord-and-plug-connected essential and sensitive electronic equipment.
- (3) Unused wire or cable pairs shall be grounded.
- (4) Ground connection for surge suppressors shall be made to the isolated grounding system.
- (5) All surge arresters shall be connected to earth ground.

(l) Access. All equipment shall be accessible to authorized personnel for the purpose of maintenance.

*History Note:* Authority G.S. 62A-42; 62A-47;  
Eff. July 1, 2016.

**09 NCAC 06C .0403 GRANT AGREEMENTS**

- (a) Grant agreements shall comply with G.S. 62A-47.
- (b) Unless otherwise determined by the Board based upon the grant application, grant agreements shall be for a term not to exceed one year.
- (c) Grant agreements shall include terms ensuring compliance with G.S. 159-26, G.S. 159-28, and G.S. 159-34.

*History Note:* Authority G.S. 62A-42; 62A-47; 143C-6-22; 143C-6-23;  
Eff. July 1, 2016.

**09 NCAC 06C .0404 GRANT FUNDS**

- (a) The grantee shall deposit grant funds in a bank account maintained by the grantee and the grantee shall assign each grant a unique accounting code designation for deposits, disbursements, and expenditures. All grant funds in the account shall be accounted for separately from other grantee funds. Grant funds may be used only between the beginning and ending dates of the grant, unless the grantee requests an extension and it is granted by the Board.
- (b) Grant funds are not transferable to any other entity. If equipment purchased using grant funds is sold or transferred within three years of the end of the grant period, the grantee shall return the grant funds to the Board on a pro-rata basis using depreciation schedules.

*History note:* Authority G.S. 62A-47;  
Eff. July 1, 2016.

**09 NCAC 06C .0405 GRANTEE REPORTS**

- (a) Grantees shall submit reports to the Board summarizing expenditures of the grant funds and the activities supported by the grant funds.
- (b) Unless otherwise stated in a grant agreement, the reports are due 15 days after September 30, December 31, March 31, and June 30.



(c) A final report shall be submitted to the Board no more than 45 days after completion of the grant, detailing the activities, expenditures of the funds, and the ways in which the needs identified in the grant application were met. The final report shall be accompanied by supporting documentation for all expenditures of the grant funds.

*History Note:* Authority G.S. 62A-47; 143C-6-22; 143C-6-23;  
Eff. July 1, 2016.

## **SUBCHAPTER 06D – GOVERNMENT DATA ANALYTICS CENTER**

### **SECTION .0100 – NORTH CAROLINA EDUCATION LONGITUDINAL DATA SYSTEM**

#### **09 NCAC 06D .0101 DEFINITIONS**

In addition to the definitions set forth in G.S. 116E-1, the following definitions shall apply to the rules in this Section:

- (1) "Aggregated" means the result of the collection and combination of data about a group of individuals that has been de-identified. Aggregated data can be used for the purposes of making comparisons or identifying patterns within or among groups of subjects or individuals. An example of aggregated data is the number of high school graduates from Wake County who graduated from the University of North Carolina System with a Bachelor of Science in Engineering within the past three years and their average salary.
- (2) "Applicable law" means all statutes and rules of North Carolina and all relevant United States federal statutes and regulations pertaining to the protection of privacy and security of confidential data. Applicable law includes the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; the Health Insurance Portability and Accountability Act, 42 U.S.C. 300gg, 29 U.S.C 1181 et seq., and 42 USC 1320d et seq.; the Workforce Innovation and Opportunity Act, 29 U.S.C. Ch. 32; and all regulations promulgated thereunder.
- (3) "Contributor" means an entity that discloses Data to the System. The Contributors may be one or more of the entities specified in G.S. 116E-5(d)(1).
- (4) "Data" means early childhood data, student data as defined in G.S. 116E-1(4), workforce data as defined in G.S. 116E-1(7), or other personally identifying data disclosed by the Contributors to the System and any data released from the System in response to data requests.
- (5) "Early Childhood" means the time period in an individual's life from birth to age eight.
- (6) "GDAC" means the Government Data Analytics Center, which has the authority to operate and oversee the System pursuant to G.S. 116E-4.
- (7) "North Carolina Education Longitudinal Data System" or "System" means the system referenced in G.S. 116E-5.
- (8) "Report" means the de-identified or aggregated information, data extract, or data file generated by the System using Data on a specified group of students, workforce members, or both, to fulfill a Request.
- (9) "Request" means an inquiry for a Report containing information on a specified group of students, workforce members, or both from the System by a Requestor
- (10) "Requestor" means an entity or individual that makes a Request to the System for a Report. A Requestor may also be a Contributor.

*History Note:* Authority G.S. 143B-1321(a)(16); 116E-4(b);  
Eff. January 1, 2021.

#### **09 NCAC 06D .0102 DATA REQUEST PROCESS**

(a) In order to initiate a Request for a Report from the System, a Requestor must complete an Education Longitudinal Data System Report Request Form located at: <https://it.nc.gov/services/nc-gdac>. The Requestor shall submit the form through the website, by emailing it to [gdacadmin@nc.gov](mailto:gdacadmin@nc.gov), or by mailing a hard copy to the following address: Government Data Analytics Center, 4101 Mail Service Center, Raleigh, NC 27699-4101.

(b) The Requestor shall include the following information in the Request form:

- (1) the name of the Requestor individual and his or her contact information;

- (2) the name of the organization for whom the Requestor is making the Request on behalf of, if applicable;
  - (3) whether or not the Requestor, or the organization the Requestor is making the Request on behalf of, is considered a public official as defined under 20 C.F.R. 603.2(d);
  - (4) the categories or types of Data needed to generate the Reports being requested, such as data pertaining to students who graduated high school in 2013 who were students in the University of North Carolina School System in 2014;
  - (5) the purposes for which the Requestor will utilize the Reports; and
  - (6) to whom or in what medium the Requestor plans to publish research based on or interpretations of the Report.
- (c) Requestors who receive data shall:
- (1) store Reports on servers or media utilizing safeguards based on nationally accepted standards, including those published by the National Institute of Standards and Technology (NIST);
  - (2) comply with all Applicable Law and the Requestor data sharing agreement in storing and using the Reports; and
  - (3) use a data destruction policy based on nationally accepted standards, including NIST standards, to destroy the Report after it has served the Requestor's stated purpose if the Report contains de-identified but not aggregated workforce data from the Division of Employment Security.

*History Note:* Authority G.S. 143B-1321(a)(16); 116E-4(b);  
Eff. January 1, 2021.

#### **09 NCAC 06D .0103 CONTRIBUTOR DATA SHARING AGREEMENTS**

- (a) A Contributor that plans to contribute Data to the System shall enter into a data sharing agreement with the Government Data Analytics Center and other Contributors. This data sharing agreement shall contain the following:
- (1) obligations to comply with all Applicable Law when disclosing, accessing, or using Data in the System;
  - (2) limitations on Data access to authorized persons employed or contracted by the parties of the Memorandum of Understanding;
  - (3) requirements for safeguarding any Data disclosed by a Contributor; and
  - (4) terms regarding the relevant limitations of liability for State and local government agencies and private or non-governmental Contributors.
- (b) In accordance with G.S. 143B-1385(d)(2), each Contributor shall be the sole custodian of the Data it stores and maintains that may be disclosed to the System. Each Contributor shall only disclose Data to the System and to GDAC that the Contributor is authorized to disclose in compliance with Applicable Law.

*History Note:* Authority G.S. 143B-1321(a)(16); 116E-4(b);  
Eff. January 1, 2021.

#### **09 NCAC 06D .0104 REQUESTOR DATA SHARING AGREEMENTS AND REQUIREMENTS**

- (a) Except as provided in Paragraph (b) of this Rule, all Requestors shall enter into a data sharing agreement with the Contributors that are the custodians of the Data that may be needed to generate a requested report. The requestor data sharing agreement shall be separate and distinct from the Memorandum of Understanding between the Contributors and GDAC.
- (b) Requestors who are also Contributors and parties to the Contributor Memorandum of Understanding shall not be required to enter into a Requestor data sharing agreement unless one or more of the Contributors responding to the party's Request notifies the Requestor that a data sharing agreement must be entered into before Data is disclosed in order to comply with Applicable Law. An example of when a Requestor data sharing agreement may be required is an instance where a Contributor is making a Request of the NC Department of Commerce for Data that has not been Aggregated.
- (c) The Requestor data sharing agreements shall contain the following:
- (1) limitations on Report access to authorized persons;
  - (2) prohibition on the re-identification of persons included in Reports in accordance with G.S. 116E-5(e);
  - (3) information technology system and data security standards required by the Contributor who will be providing Data for the Report;

- (4) privacy compliance standards;
- (5) data breach procedures, including notification of DIT of any cybersecurity incidents as described by G.S. 143B-1320(a)(4a) or G.S. 143b-1320(a)(16a) using the incident report form available at: <https://it.nc.gov/resources/cybersecurity-risk-management/statewide-cybersecurity-incident-report-form>;
- (6) terms regarding the disclaimer of liability as applied to Contributors pursuant to the doctrine of sovereign immunity and statutory immunity; and
- (7) data retention and data removal standards.

*History Note:* Authority G.S. 143B-1321(a)(16); 116E-4(b);  
Eff. January 1, 2021.