

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Transportation

RULE CITATION: 19A NCAC 02D .0803

DEADLINE FOR RECEIPT: August 9, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 5 and 6: These lines are unclear and ambiguous. Who must advertise the projects? In how many daily newspapers must the project be advertised? What does "prior" mean? The day before? How does the agency decide when it has met the criteria of having advertised "throughout the state"? The statute cited states "newspaper having general circulation in the State of North Carolina."

Page 1, line 7: Isn't the agency making the invitation to bid available to the public and not just "to interested parties"? Consider striking "to interested parties". If the invitation to bid is only being provided via the website "to interested parties", explain how that works. Is there an "interested parties list" or some special access granted?

Page 1, Line 9: Is "indicate" the correct verb? Does not the invitation to bid not "state" or "contain" the listed information?

Page 1, Lines 13-24: The additional language appears to be misplaced in this Rule. Or perhaps renaming the Rule would be appropriate. The additional language concerns eligibility to bid and not the advertisement of or invitations to bid. The agency may want to consider making the additional language its own rule or perhaps add it to another rule.

Paragraph D is wordy and unclear. Paragraphs (a) and (b) place requirements upon the agency. The first sentence of (d) does not state who shall add prospective bidders to the "Authorized bidder list" but considering paragraphs (a) and (b), it would appear that the agency would be required to add them to the list based purely upon the prospective bidder's expression in some form of desire to bid. However, this is in conflict with the balance of paragraph (d) which isn't any clearer.

If RRC staff counsel understands the intention of paragraphs d and e correctly, the agency may want to consider the following language as a more concise alternative. "(d) As a prerequisite for filing any bid, prospective bidders shall sign up for the Interested

William W. Peaslee
Commission Counsel

Date submitted to agency: July 26, 2022

Party List for each project they intend to submit bid on by providing their firm name, a contact name, and contact information via the Department's website at connect.ncdot.gov/letting. Only prospective bidders that have prequalified pursuant to Rule .0801 of this Section may sign up for the Interested Party List."

The inclusion of technical instructions on navigating a website are unnecessary in a rule and better suited for a website.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: July 26, 2022

1 19A NCAC 02D .0803 is amended as published in 36:20 1668-1669 without changes as follows:

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3 **19A NCAC 02D .0803 ADVERTISEMENT AND INVITATIONS FOR BIDS**

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5 (a) All projects shall be advertised in daily newspapers throughout the state prior to the bid ~~opening-opening~~ as set
6 forth in G.S. 136-28.1 and 143-129.

7 (b) On the date of advertisement, an invitation to bid shall be made available to interested parties on the Department's
8 ~~web site~~ website at connect.ncdot.gov/letting.

9 (c) The invitation to bid shall indicate the contract identification number and description of the projects to be ~~let~~, let
10 to contract, a general summary of the items and approximate quantities of work to be performed, and the time and
11 place for the public opening and reading of the bids received. Information concerning the cost and the availability of
12 bid documents shall also be provided in the invitation to bid.

13 (d) Prospective bidders who desire to bid on projects identified in the invitation to bid shall ~~purchase~~ be added to the
14 Authorized Bidders List. The Authorized Bidder's List is composed of contractors that are prequalified bidders as set
15 forth in Rule .0801 of this Section that have also added themselves to the Interested Parties List found on the
16 Department's website at connect.ncdot.gov/letting. ~~the project specific bid documents from the Department containing~~
17 ~~information necessary to submit the bid. Other interested parties may also purchase project specific bid documents~~
18 ~~from the Department. Documents may be purchased at cost from the Department.~~

19 (e) Authorized bidders shall sign up for the Interested Parties List to receive letting information by:

- 20 1. visiting connect.ncdot.gov/letting;
- 21 2. clicking on the "Interested Parties" link;
- 22 3. entering a firm name;
- 23 4. entering a contact name; and
- 24 5. entering an email address for the contact.

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26 *History Note: Authority G.S. 136-28.1; 143-129;*

27 *Eff. April 3, 1981;*

28 *Amended Eff. February 1, 2008; December 1, 1993; November 1, 1991;*

29 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*
30 *6, ~~2016~~ 2016;*

31 *Amended Eff. September 1, 2022.*

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