

01 NCAC 05A .0112 is amended as published in 33:23 NCAC 2240-2242 as follows:

01 NCAC 05A .0112 DEFINITIONS

~~(a) For the purpose of this Chapter, agency is defined as all departments, institutions, boards, commissions, universities, or other units of the State (including the Division of Purchase and Contract), and community colleges and local school administrative units, unless specifically exempted herein by reference. For the purpose of identifying a special responsibility constituent institution, as designated by the University Board of Governors, just the name "university(ies)" shall be used to distinguish any differences in the rules.~~

~~(b) A service contract shall mean any agreement in which an independent contractor performs services requiring specialized knowledge, experience, expertise or similar capabilities for a state agency for compensation involving an expenditure of public funds. The services may include (by way of illustration, not limitation) services such as maintenance of buildings or equipment, auditing, film production, employee training and food services, provided that the service is not primarily for review, analysis or advice in formulating or implementing improvements in programs or services (in which case rules relating to consultants shall be applicable).~~

~~(c) Where the term "Offer" is used, it refers to a bid, proposal or Offer submitted in response to an Invitation for Bids, Request for Proposals, Negotiation, or Request for Quotations.~~

~~(d) For the purpose of this Chapter, commodity(ies) is defined as any equipment, materials or supplies. It does not include services or printing.~~

For the purpose of this Chapter:

(1) "Agency" means all departments, institutions, boards, commissions, universities, community colleges or other units of the State, unless specifically exempted by statute.

(2) "Best and Final Offer" ("BAFO") is a document that memorializes the details of Negotiations between the State and a Vendor and mutually modifies the Vendor's Offer.

(3) "Best Value Procurement" means the selection of a Vendor based on a determination of which Offer provides the best trade-off between price and performance, where quality is considered an integral performance factor as defined shall have the same meaning as in G.S. 143-135.9.

(4) "Bid Value Benchmark" or "General Delegation" means the maximum authorized expenditure set pursuant to G.S. 143-52(a) and 143-53.1 for which an agency may contract to purchase Goods or Services without obtaining prior approval for the purchase from the Division.

(5) "Consultant Services" means contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise and professional qualifications to investigate assigned problems or projects and to provide counsel, review, analysis or advice in formulating or implementing improvements in programs or Services. This includes improvements related to the organization, planning, directing, control, evaluation and operation of a program, Agency or department.

(6) "Clarification" means communications between the State and a Vendor that may occur after receipt of Vendor's Offer made for the purpose of eliminating irregularities, informalities, or apparent

clerical mistakes in an Offer. A Clarification may also be used ~~to allow the State's reasonable interpretation of~~ in order for the State to interpret an Offer or Offers or to facilitate the State's evaluation of all Offers. A Clarification shall not be used to cure material deficiencies in an Offer, alter the scope of an Offer, or to negotiate.

(7) "Competition" in purchasing exists when the available market for the Goods or Services to be acquired consists of more than one Responsible Vendor that is technically qualified and willing to submit an Offer.

(8) "Competitive Range" means a rational grouping of the most competitive Offers as determined by the Purchasing Agency.

(9) "Contract" means any type of agreement entered into by State Agencies, regardless of what it may be titled or called, setting out the obligations of the parties concerning a Procurement of Goods or Services.

(10) "Deficiency" means either a failure to meet a stated requirement or a combination of weaknesses in an Offer that materially increases the risk of unsuccessful contract performance, that a Vendor will be unable to meet its contractual obligations.

(11) "Division" means the Division of Purchase and Contract.

(12) "Electronic" means electrical, digital, magnetic, optical, electromagnetic or any other similar technology.

(13) "Electronic Bid System" means the Division's Electronic system used variously to advertise Solicitations, notify Vendors, conduct Reverse Auctions, and post contract awards.

(14) "Emergency Situations" means unforeseen circumstances that endanger lives, property, or the continuation of a vital program, as determined by the purchasing Agency Director, and that can be rectified only by immediate purchases or rental of Goods or Services.

(15) "Goods" means any tangible property, including all equipment, materials, supplies and commodities. Unless the context requires otherwise, acquisition of printing shall be considered the purchase of Goods under these Rules.

(16) "Goods Contract" means any agreement predominantly involving the Procurement of Goods from a Vendor, but which may also have ancillary Services aspects.

(17) "Negotiation" means oral or written communications in a waived or open competitive Procurement between the State and Vendor undertaken with the intent of allowing Vendor to revise their Offers. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed contract. Negotiations are specific to each Offer and shall be conducted to maximize the State's ability to obtain best value based on the evaluation factors set forth in the Solicitation. Negotiations shall be memorialized in any resulting Contract.

(18) "Offer" means a bid, proposal, BAFO or other proposition submitted in response to any Solicitation, Negotiation, or other approved acquisition process, as well as responses to solution-based Solicitations and government-Vendor partnerships.

- (19) "Personal Service Contract" has the same definition as in G.S. 143-48.6(b). Personal Service Contracts may include Contracts with means a Contract for defined Services provided by a professional individual, corporation, or independent contractor on a temporary or occasional basis, including those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts or similar professions. Personal Services Contracts are a type of Services Service Contract.
- (20) "Pressing Need" means a need arising from unforeseen causes outside the State's control, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, which can be satisfied only by immediate purchase or rental of Goods or Services.
- (21) "Price" means the amount paid by the State to a Vendor for Goods or Services.
- (22) "Procurement" means the process of acquiring Goods or Services.
- (23) "Progressive Award" means an award of portions of a definite quantity requirement to more than one Vendor. Each portion is for a definite quantity and the sum of the portions is the total quantity procured. A Progressive Award may be in the Purchasing Agency's best interest when awards to more than one Vendor for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.
- (24) "Public Funds" means any amount received, held, disbursed or otherwise subject to or accounted for in accordance with the State Budget Act and amounts used to acquire Goods and Services that are required to be purchased in accordance with Article 3 of Chapter 143 of the General Statutes.
- (25) "Purchasing Agency" or "Purchaser" means the Agency that issues a purchase order or otherwise acquires Goods or Services through a purchasing process.
- (26) "Recalled Bid" means a Bid that is rescinded by the Vendor after the bid opening but prior to a contract being awarded.
- (27)(26) "Responsible Vendor" means a Vendor who demonstrates in its Offer that it has the capability to perform fully the requirements of the Solicitation. Solicitation and who shows sufficient integrity, financial stability and reliability to perform its contract obligations in a satisfactory manner.
- (28)(27) "Responsive Offer" means an Offer that conforms to the Requirements of the Solicitation in all material respects to be considered by the State for award.
- (29)(28) "Requirement" is a provision of a Solicitation and any resulting Contract which prescribes the nature or details of a standard, process or procedure that must be complied with by the Vendor before any further evaluation of the Offer is conducted by the State.
- (30)(29) "Sealed Offer" means an Offer that remains unopened until the public opening time stated in the Solicitation.
- (31)(30) "Secretary" means the Secretary of the NC Department of Administration.
- (32)(31) "Service Contract" means any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, expertise or similar capabilities in the Vendor.

Contracts for Consultant Services and Personal Services are also types of a Service ~~Contracts.~~
~~Contract.~~ A Service Contract may also involve the ancillary purchase of Goods.

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

(34)(33) "Signature" means a manual autograph, an Electronic identifier or ~~the an~~ Electronic ~~result or an~~ authentication technique, ~~which is attached to or logically associated with a record and that is~~ intended by the person using it to have the same force and effect as a manual signature.

(35)(34) "Small Purchase" means the purchase of Goods and Services not covered by a Term Contract where the expenditure of Public Funds is less than a Small Purchase Benchmark ~~amount. amount set and published by the SPO on the Division's website.~~

(36)(35) "Solicitation" means a Written or Electronic Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), Best and Final Offer (BAFO), Request for Information (RFI) or other such documents ~~approved by the SPO and expressly~~ used to solicit or invite Vendor Offers, or to request information regarding the acquisition of Goods and Services, including all mutually agreed attachments and items incorporated by reference.

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

(38)(37) "SPO" means the State Procurement Officer.

(39)(38) "Tabulation" means a ~~publicly available~~ list of Vendors submitting Offers in response to a particular Solicitation and, if applicable, the prices Offered ~~by each, as allowed under G.S. 143-52(a).~~

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

(41) "Term Contract" is a binding agreement between purchaser and seller to buy and sell certain commodities, printing, or services at certain prices and under stipulated terms and conditions.

(42)(39) "Total Cost of Ownership" means a summation of all purchase, operating, and related costs to be expended during the projected lifetime of a Good or Service or both.

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

(44)(41) "Voided Bid" means an Electronic bid that was submitted by a Vendor in connection with an Electronic Solicitation that has been ~~cancelled and cancelled, the unopened bids voided. bids voided and not opened electronically.~~

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

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

(47)(43) "Written" or "Writing" means a communication recorded in a medium of expression that can be preserved, read, retrieved, and reproduced for an indefinite period of time, including information in a form that is electronically transmitted and stored.

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History Note: Authority G.S. ~~116-31.10;~~ 143-48.3; 143-48.6; 143-49; 143-52; 143-53; 143-53.1; 143-57; 143-135.9;
Eff. February 1, 1996;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.
Eff. October 1, 2019

01 NCAC 05B .0103 is amended as published in 33:23 NCAC 2242-2243 as follows:

SUBCHAPTER 05B - PURCHASE PROCEDURES

SECTION .0100 - REQUISITIONING

01 NCAC 05B .0103 CONFIDENTIALITY

(a) All information and documentation in whatever authorized form, (e.g., whether Electronic, Written, and verbal) or verbal relative to the development of a contractual document (Request for Quotation, Invitation for Bids, Request for Proposals, Waiver of Competition, Negotiation, etc.) Solicitation for a proposed or pending Procurement procurement or contract shall be deemed remain confidential in nature, except as deemed necessary by the purchaser Purchaser to develop a complete contractual document. Such material shall remain confidential until the award of contract or action has been taken by the Purchasing Agency to cancel the Procurement. (See Rules .0210, .0309, .1501 and .1518 of this Subchapter).

(b) All information and documentation relative to the development of a Specification shall be confidential until a contract is entered into by the Purchasing Agency and the Vendor in accordance with G.S. 143-52(a).

(c) Trade secrets secrets, test data and similar proprietary information that the Vendor does not wish disclosed shall be identified as follows:

- (1) each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL".
"CONFIDENTIAL"; and
- (2) if only a portion of a page marked "CONFIDENTIAL" contains trade secret information, the trade secret information shall be designated with a contrasting color or by a box around such information.

(d) Cost information shall not be confidential.

History Note: Authority G.S. 132-1.1; 133-33; 143-52; 143-53; 143-60;

Eff. February 1, 1996;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

Eff. October 1, 2019

01 NCAC 05B .0303 is readopted as published in 33:22 NCR 2243 as follows:

SECTION .0300 - PROCUREMENT AUTHORIZATION AND PROCEDURES

01 NCAC 05B .0303 ~~TELEGRAPH~~ ELECTRONIC, FACSIMILE, AND TELEPHONE OFFERS

E-mail, ~~Telegraph~~, facsimile, and telephone ~~offers~~ Offers shall not be accepted in response to solicitations **A**
Solicitation that **are is** required to be sealed pursuant to Rule .0301 of this Section. The use of digital or Electronic
Signatures on Electronic Offers must be consistent with G.S. ~~66-312~~-66-312(9).

History Note: Authority G.S. ~~66-312~~; 143-49; 143-52; 143-53;

Eff. February 1, 1976;

Readopted Eff. February 27, 1979;

Amended Eff. April 1, 1999; February 1, 1996.

Eff. October 1, 2019

01 NCAC 05B .0305 is readopted as published in 33:23 NCR 2243 as follows:

01 NCAC 05B .0305 PUBLIC OPENING

(a) Pursuant to G.S. 143-52(a) the Purchasing Agency shall publicly open and tabulate all Offers (except those that have been previously withdrawn, or Voided Bids) Advertiser procurements shall be publicly opened at the time, date, and place identified in the procurement document. Solicitation. The Tabulation shall be made public at the time it is created created, unless otherwise confidential pursuant to Rule .0103 of this Section. There shall be at least two Purchasing Agency employees present at the opening when a Sealed Offer is required. At the time of opening, the names of the companies, the manufacturer(s) and catalog number(s) of the item(s) they have offered and the prices, deliveries and payment terms they have submitted shall be tabulated and this tabulation shall become public record, except as provided in Paragraph (b) of this Rule.

(b) When Negotiation after receipt of Offers is authorized, authorized pursuant to G.S. 143-49 and Rule .0503 of this Subchapter, only the names of offerors and the Goods and Services offered shall be tabulated at the time of opening. The cost and price Offer shall become available for public inspection at the time of the award.

(b)(c) Under the two-step process, process outlined in paragraph (b) of this Rule, the responsive technical Technical Offers will shall be evaluated reviewed for compliance with Rule .0301 of this Subchapter. and, if acceptable, only Only the cost/price cost and price Offers for such acceptable Offers found to be in compliance with Rule .0301 of this Subchapter will then be publicly opened. At least two days prior notification will be given to such offerors-Vendors of the time and place of the opening. Under a two-step process, the cost/price offer(s) shall not become public record until the technical offer(s) has been evaluated (first step) and then only those offerors determined by the agency which issued the solicitation document to have acceptable technical offers shall have their cost/price offers opened (second step). The cost/price offers from offerors whose technical offers were deemed unacceptable shall remain unopened. The remaining cost/price offers shall be publicly opened, and the offeror(s) with the acceptable technical offer(s) notified of the time and place for the opening. At least two agency working days notice shall be given prior to the opening. In addition, there shall be at least two agency employees present at the opening.

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.
Eff. October 1, 2019

01 NCAC 05B .0306 is readopted as published in 33:22 NCR 2243 as follows:

01 NCAC 05B .0306 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS

~~No late offer, late modification, or late withdrawal shall be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the action or inaction of agency personnel directly serving the procurement process. The offeror shall have his offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available. All Offers or modifications must be received by the due date, time and location as specified in the Solicitation document. Any Offer or modification received after the specified time shall not be considered. Withdrawal of an Offer must be requested in writing prior to the contract award.~~

*History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.
Eff. October 1, 2019*

01 NCAC 05B .0308 is readopted as published in 33:23 NCR 2244 as follows:

01 NCAC 05B .0308 EXTENSION OF ACCEPTANCE TIME

When in the public interest, ~~companies~~ Vendors may be requested by the Purchasing Agency to extend the time ~~offered~~
~~for the acceptance of offers.~~ within which an Offer is to be accepted.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996.
Eff. October 1, 2019

01 NCAC 05B .0309 is readopted as published in 33:23 NCR 2244 as follows:

01 NCAC 05B .0309 EVALUATION

(a) In determining the award of ~~contract~~, Contract, ~~bona fide offers~~ Responsive Offers shall be considered and evaluated as provided by statute and applicable rules. The evaluation criteria to be used in determining the award of ~~contract~~ Contract shall be identified in the ~~procurement~~ Solicitation document.

~~(b) An unexecuted offer or an offer without a delivery time shall be rejected.~~

~~(c)(b) During the period of evaluation and prior to award, only the information provided in the tabulation is public record.~~ Possession of Offers, ~~offers~~, including any accompanying information submitted with the ~~offers~~ Offers, shall be limited to persons in the ~~agency~~ Purchasing Agency who are responsible for handling the ~~offers~~ Offers and accompanying information, and to others determined necessary by the ~~agency~~ Purchasing Agency ~~which issued the solicitation document~~, for the purpose of evaluation and award of Contracts, ~~contract~~. No Vendor shall participate in the evaluation process nor submit any additional information or materials during the period of evaluation, unless requested by the Purchasing Agency. Offeror participation in the evaluation process shall not be permitted. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by the agency which issued the solicitation document. After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets subject to the provisions of Rules .1501 and .1518 of this Subchapter.

(c) Evaluation of Offers shall be conducted by the Purchasing Agency, in accordance with the following requirements:

~~(1) — following~~ Following evaluation of the ~~Offers~~, Offers by the Purchasing Agency shall submit Agency, a recommendation shall be submitted to the Division to review for compliance with Rule .0301 of this Subchapter. Division;

~~(2) — evaluation~~ Evaluation scoring sheets, and other materials utilized to determine the ranking or assessment of the Responsive Offers shall be retained in the Agency Procurement file, file; and

~~(d) If a Vendor is determined to be non-responsive,~~ has not met the evaluation criteria provided in the Solicitation document, a written determination of such status shall be made, including the reason(s) therefore with any supporting documentation in the Procurement file.

(e) The failure of a Vendor to provide requested information to the Purchasing Agency in connection to a Clarification or mandatory addendum shall be sufficient justification for a determination of non-responsiveness, not having met the criteria.

*History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996.
Eff. October 1, 2019*

01 NCAC 05B .0310 is readopted as published in 33:23 NCR 2244 as follows:

01 NCAC 05B .0310 NOTIFICATION OF AWARD

~~If a solicitation is required to be advertised through the Division of Purchase and Contract, then notice of the resulting contract award shall be posted via the Division of Purchase and Contract's home page by the agency issuing the solicitation document in accordance with Rule .0316 of this Section. In addition, after contracts are awarded, successful companies shall be notified in writing or electronically by the agency issuing the solicitation document.~~

(a) Following the award of a Contract in accordance with Rule .0301 of this Section, the Purchasing Agency shall notify the winning Vendor in writing. Written notifications may include letter or Electronic means means, such as posting on the Electronic Bid System, letter System or e-mail.

(b) Purchasing Agencies shall post Contract awards in the same manner described in Rule .0316 of this Section.

*History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; May 1, 1988; July 1, 1987;
Temporary Amendment Eff. February 15, 1998;
Amended Eff. April 1, 1999.
Eff. October 1, 2019*

01 NCAC 05B .0316 is readopted as published in 33:23 NCR 2244-2245 as follows:

01 NCAC 05B .0316 ADVERTISEMENT REQUIREMENTS

(a) ~~Unless already required by statute, all advertisements required by rule shall be through the Division of Purchase and Contract via the Division's home page on the internet. If advertisement is required by rule, the solicitation shall be advertised at least once and at least 10 days prior to the date designated for opening. This Rule does not prevent solicitation of offers by additional direct mailings or additional advertisement by an agency.~~

(a) Unless otherwise directed by statute or excepted pursuant to Paragraph (d) of this Rule, all advertisements required by Rule .0301 of this Section shall ~~advertise~~ be posted through the Division's Electronic Bid System for at least 10 calendar days, unless a memo requesting a waiver is received by the Division and approved by the SPO in accordance with the Rule .1401 of the Section. ~~This Rules does not prevent Solicitation of Offers by additional-The Purchasing Agency may also solicit bids via direct mailings or additional advertisement so long as the requirements of this Paragraph are met. by a Purchasing Agency.~~

(b) ~~Agencies required by rule to advertise their solicitations shall electronically transmit the required data directly to the Division's home page. The required data to be advertised shall include the complete solicitation Solicitation document (specifications, requirements, terms and conditions, etc.), with agency name, buyer name, phone number and address for accessing hard copies of the solicitation Solicitation, solicitation identification number, title (a title, short description of the commodity, service or printing requirement), requirement, and the opening date, time and place. If the solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, this information shall also be furnished with the advertisement, to include date, time, location, contact person and the contact person's phone number.~~

(c) ~~Within three agency working days from the award of a contract that has been advertised through the Division, Division's Electronic Bid System, agencies Purchasing Agencies shall electronically transmit an award notice directly to the Division's Electronic Bid System, home page on the internet. The award notice shall be posted for at least 30 consecutive calendar days. This award notice shall identify the contract and award information.~~

(d) Exceptions to this Rule are as follows:

- (1) ~~When it is deemed by the agency's executive officer or the officer's designee that there is a valid reason for the agency not If the Purchasing Agency is unable to transmit the advertisement or award notice electronically, that agency may submit the data to the Division, so the Division may Division to transmit it electronically, or the agency may place the advertisement (excluding the complete solicitation Solicitation document) via newspaper. If advertised via newspaper, the agency which issued the solicitation document shall be responsible for placing the advertisement and no the award notice shall not be required. Some valid reasons include computer equipment failure, networking difficulties, or insufficient copies of samples for a printing job.~~
- (2) ~~If there is an attachment to a solicitation that the agency determines will not be electronically transmitted, then the solicitation document, when it is electronically transmitted, shall include instructions to contact the agency which issued the solicitation to obtain the attachment. If a~~

Purchasing Agency is unable to electronically transmit an attachment to the Solicitation, the Purchasing Agency shall include instructions to obtain the attachment in the advertisement.

- (3) ~~If an agency determines that it is not feasible to electronically transmit a particular solicitation document through the Division's home page, then the agency shall electronically transmit a summary notice in the same way as if it had electronically transmitted the solicitation document. The summary notice will instruct anyone inquiring about the solicitation on the Division's home page to contact the agency for a hard copy. If a Purchasing Agency is unable to electronically transmit a Solicitation, the Purchasing Agency shall electronically transmit a summary notice which will provide that provides~~ interested Vendors with instructions to obtain a copy of the Solicitation.

- (4) Reasons a Purchasing Agency may be unable to electronically transmit the documents listed above include computer equipment failure, networking difficulties, or insufficient copies of samples for a printing job.

*History Note: Authority G.S. 143-52; 143-53;
Temporary Adoption Eff. February 15, 1998;
Eff. April 1, 1999.
Eff. October 1, 2019*

01 NCAC 05B .0317 is readopted as published in 33:23 NCR 2245 as follows:

01 NCAC 05B .0317 MANDATORY CONFERENCES/SITE VISITS

~~(a) It is recommended, except in unusual cases, for agencies only to urge and caution potential offerors to attend scheduled conferences or site visits.~~

~~(a)(b)~~ When a ~~solicitation~~ Solicitation requires potential ~~offerors~~ Vendors to attend a mandatory conference or mandatory site visit, the date, time, location, and other ~~pertinent~~ details of the conference or site visit shall be given in the ~~solicitation document~~, Solicitation, and in the advertisement (if required by rule) ~~when required by Rule .0316 of this Section.~~

~~(b)(c)~~ If only one ~~potential offeror~~ Vendor attends the mandatory conference or mandatory site visit, ~~the conference or site visit may continue to be conducted, but the solicitation shall be canceled immediately following the Purchasing Agency may conduct or postpone the conference or site visit. If this occurs, the agency shall investigate why The Purchasing Agency shall review the Solicitation and factors set out in Rule .1401 of this Section to determine whether any Competition is available and why only one potential Vendor attended. offeror was in attendance and ascertain if there is any competition available. If it is determined that competition is available, the agency shall again attempt to obtain competition by following the rules of this Subchapter, unless otherwise permitted by rule. The Purchasing Agency may schedule another conference or site visit if it determines that Competition is available, and it would be in the best interest of the State. If it is determined that there is no competition Competition available, then the procurement Procurement may be handled as a subject to approval for a waiver of Competition as permitted by rule pursuant to Rule Rules .1401 and .1402 of this Section.~~

~~(c) The Purchasing Agency shall document details of the conference or site visit as part of the official Procurement records.~~

~~(d) Any and all questions or Clarifications by a potential offeror Vendor regarding a solicitation document Solicitation shall be addressed to the purchaser Purchasing Agency named on the Solicitation document. Any and all revisions to the solicitation document Solicitation shall be made only by written addendum from the purchaser. Purchasing Agency. Verbal communications from whatever source are of no effect.~~

History Note: Authority G.S. 143-52; 143-53;

Eff. April 1, 1999.

Eff. October 1, 2019

01 NCAC 05B .0503 is readopted with changes as published in 33:23 NCR 2246 as follows:

01 NCAC 05B .0503 NEGOTIATION

~~If an agency does not receive a satisfactory offer in response to a solicitation and all offers are rejected, negotiations may be conducted with all known sources of supply that may be capable of satisfying the requirement, if it is determined by the agency that issued the solicitation document that soliciting offers again would serve no purpose. The negotiations shall be conducted by that agency if under their benchmark or delegation. Negotiations shall be conducted in writing and shall include standard language and terms and conditions issued by the Division of Purchase and Contract, unless otherwise provided by rule. If the negotiations are conducted with only one source or if only one source responds to the negotiations, the reason for lack of competition shall be documented in writing for public record. Negotiations may also be conducted under conditions that merit a waiver of competition, or in other situations that are advantageous as determined by the SPO.~~

(a) If the Purchasing Agency does not receive a Responsive Offer to a Solicitation and determines that soliciting Offers again would not yield a ~~difference~~ **different** result, the Purchasing Agency may negotiate with Vendors in the Competitive Range or reject all Offers and ~~negotiated~~ **negotiate** with one or more sources of supply that may be capable of satisfying the requirement. Negotiations may also be conducted under conditions that merit a waiver of Competition pursuant to Rule .1401 of this Section.

(b) Negotiations shall be conducted by the Purchasing Agency if **the Solicitation is** under its Bid Value Benchmark or General Delegation. A Purchasing Agency may request the participation of the Division in any Negotiation.

(c) Negotiations shall be memorialized by a ~~mutually satisfactory document,~~ **written agreement** executed by the parties and issued by the Division.

(d) All Negotiation results shall be documented in writing for public record.

History Note: Authority G.S. 143-52; 143-53; 143-60;

Eff. February 1, 1996;

Amended Eff. April 1, 1999.

Eff. October 1, 2019

01 NCAC 05B .1519 is readopted as published in 33:23 NCR 2247-2248 as follows:

01 NCAC 05B .1519 PROTEST PROCEDURES

~~(a) To insure fairness to all offerors and to promote open competition, agencies and the Division of Purchase and Contract shall actively follow up and be consistent in responding to an offeror's protest over contract awards~~

~~(b) This Rule applies only to contracts with an actual or estimated dollar value over ten thousand dollars (\$10,000). Agencies may establish procedures to handle an offeror's concerns for contracts with less dollar value.~~

~~(c) When an offeror wants to protest a contract awarded by an agency over ten thousand dollars (\$10,000) in value, the agency and the offeror shall comply with the following:~~

~~(1) The offeror shall submit a written request for a protest meeting to the agency's executive officer which shall be received by the agency's executive officer's office within 30 consecutive calendar days from the date of the contract award. The executive officer shall furnish a copy of this letter to the SPO within five consecutive calendar days of receipt. The offeror's letter shall contain specific reasons and any supporting documentation for why it has a concern with the award. If the letter does not contain this information, or if the executive officer determines that a meeting would serve no purpose, then the executive officer may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request. A copy of the executive officer's letter shall be forwarded to the SPO.~~

~~(2) If the protest meeting is granted, the executive officer shall attempt to schedule the meeting within 30 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 consecutive calendar days from the date of the protest meeting, the executive officer shall respond to the offeror in writing with the executive officer's decision. A copy of the executive officer's letter shall be forwarded to the SPO.~~

~~(3) The agency shall notify the SPO in writing of any further administrative or judicial review of the contract award.~~

~~(4) The executive officer may appoint a designee to act on the executive officer's behalf under this Rule.~~

~~(d) When an offeror wants to protest a contract awarded by the Secretary over ten thousand dollars (\$10,000) in value, the SPO and the offeror shall comply with the following:~~

~~(1) The offeror shall submit a written request for a protest meeting to the SPO which shall be received by the Division within 30 consecutive calendar days from the date of the contract award. The offeror's letter shall contain specific reasons and any supporting documentation for why it has a concern with the award. If the letter does not contain this information, or if the SPO determines that a meeting would serve no purpose, then the SPO may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request.~~

~~(2) If the protest meeting is granted, the SPO shall attempt to schedule the meeting within 30 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10~~

consecutive calendar days from the date of the protest meeting, the SPO shall respond to the offeror in writing with the SPO's decision.

(a) When a Vendor wants to protest a Contract awarded by a Purchasing Agency valued at less than the amount set forth in G.S. 143-53, the Purchasing Agency and Vendor shall comply with the following:

- (1) The Vendor shall submit a written request for a protest meeting to the Agency's executive officer or his or her designee within 30 calendar day days from the date of the Contract award. The executive officer shall furnish a copy of this letter to the SPO within five calendar days of receipt. The Vendor's request shall contain reasons why it has a concern with the award and any supporting documentation. If the request does not contain this information, or if the executive officer determines that the protest is meritless so that a meeting would serve no purpose, then the executive officer may, within 10 calendar days from the date of receipt of the request, respond in writing to the Vendor and refuse the protest meeting request. A copy of the executive officer's decision letter shall be forwarded to the SPO.
- (2) If the protest meeting is granted, the executive officer shall schedule the meeting within 30 calendar days after receipt of the request, or as soon as possible thereafter, unless mutually agreed. Within 10 calendar days from the date of the protest meeting, the executive officer shall respond to the Vendor in writing with the executive officer's decision and appeal rights, rights under Article 3 of G.S. 150B. A copy of the executive officer's decision letter shall be forwarded to the SPO.
- (3) The Purchasing Agency shall notify the SPO in writing of any further administrative or judicial review of the Contract award.

(b) When a Vendor wants to protest a Contract awarded by the Secretary valued over the amount set forth in G.S. 143-53, the SPO and Vendor shall comply with the following:

- (1) The Vendor shall submit a written request for a protest meeting to the SPO within 30 calendar days from the date of the Contract award. The Vendor's request shall contain reasons why it has a concern with the award and any supporting documentation. If the request does not contain this information, or if the SPO determines that the protest is meritless so that a meeting would serve no purpose, then the SPO may, within 10 calendar days from the date of receipt of the request, respond in writing to the Vendor and refuse the protest meeting request.
- (2) If the protest meeting is granted, the SPO shall schedule the meeting within 30 calendar days after receipt of the request, or as soon as possible thereafter, unless mutually agreed. Within 10 calendar days from the date of the protest meeting, the SPO shall respond to the Vendor in writing with the SPO's decision and appeal rights, rights under Article 3 of G.S. 150B.
- (3) The SPO shall notify the Secretary of any further administrative or judicial review of the Contract award.

History Note: Authority G.S. 150B-2; 150B-22; 150B-23; 143-53;
Eff. February 1, 1996;

1 *Temporary Amendment Eff. February 15, 1998;*
2 *Amended Eff. April 1, 1999.*
3 *Eff. October 1, 2019*

01 NCAC 05B .1520 is proposed for adoption as follows:

01 NCAC 05B .1520 ~~DEFAULT PROCEEDINGS; DEBARMENT~~

~~(a) The agency which 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 which issued the solicitation document resulting in the contract may take action, immediate if necessary, to purchase the needed commodities, printing or services on the open market and charge any additional cost for the commodities, printing 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 the Division of Purchase and Contract in writing. This does not limit any other remedies that may be available to the State or agency.~~

(a) In addition to any civil or criminal remedies available to the State, the SPO may debar the Vendor from receiving an award under a State Contract or conducting future business with the State for up to a one year term in accordance with this Rule.

(b) Cause for initial or successive debarment may include:

(1) deliberate failure without good cause to perform a Contract in accordance with the terms and conditions of the Contract;

(2) substantiated or uncured complaints;

(3) the Vendor or any officer, director, owner, project manager, Procurement manager or chief financial officer is convicted under a State or Federal statute of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity which currently, seriously, and directly affects responsibility as a State Vendor;

(4) the Vendor or any officer, director, or owner is debarred from bidding or contracting with the federal government;

(5) conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals; and

(6) violation of the State Government Ethics Act or the Lobbying laws.

~~(c) (b) Upon finding cause to debar a Vendor, the SPO The Division may remove the contractor Vendor from any mailing distribution lists which may be utilized for up to a one year term. and debar the contractor from doing business with the agency, or any agency, for a period of time at the discretion of the Division.~~

(d) The SPO shall notify a Vendor of any debarment and appeal rights, rights under Article 3 of G.S. 150B, in writing, which may include an Electronic form.

*History Note: Authority G.S. 143-49; 143-52; 143-53; 143-60; 143-64.b(e)(21); 147-64.6(c)(21); 143-746
Eff. February 1, 1996;
Amended Eff. April 1, 1999.*

- 1 01 NCAC 05B .1521 is proposed for adoption as follows:
- 2

01 NCAC 05B .1521 is readopted as published in 33:23 NCR 2249 as follows:

01 NCAC 05B .1521 FAITHFUL PERFORMANCE

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

~~(b) Liquidated damages, in the form of a monetary penalty for late delivery, may be provided for in the contract, as a means of ensuring faithful performance from the contractor.~~

A Solicitation and Contract may include terms ensuring a Vendor's performance such as:

- (1) a bond, or similar assurance;
- (2) liquidated damages;
- (3) a percentage of the Contract value held as a retainage;
- (4) withholding final payment contingent on acceptance of the final deliverable; and
- (5) any other provision ~~which that~~ assures performance of the Vendor.

*History Note: Authority G.S. 143-52; 143-53;
Eff. February 1, 1996;
Amended Eff. April 1, 1999.
Eff. October 1, 2019*

01 NCAC 05B .1522 is readopted as published in 33:23 NCR 2249 as follows:

01 NCAC 05B .1522 RECIPROCAL PREFERENCE

(a) Each Solicitation ~~document~~ used to obtain contracts for ~~equipment, materials, supplies,~~ Goods and services Services that exceed ~~twenty five thousand dollars (\$25,000) in value~~ thresholds mandated in G.S. 143-59(b) shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the ~~solicitation document.~~ Solicitation. This shall not prevent the ~~agency~~ Purchasing Agency that issued the ~~solicitation document~~ Solicitation from investigating this information and concluding that the principal place of business is different, according to their the Agency's interpretation of as defined by G.S. 143-59(c).

(b) A reciprocal preference shall not be used when ~~procurements are being made~~ Procurement Procurements are exempted under G.S. 143-53(a)(5) and G.S. 143-57. G.S. 143-59(d).

~~(c) For the purpose of this Section, a bidder and offeror, as well as bid and proposal, are interchangeable.~~

History Note: Authority G.S. 143-59;

Temporary Adoption Eff. January 14, 2002;

Eff. April 1, 2003.

Eff. October 1, 2019