

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Department of Transportation

RULE CITATION: 19A CAC 02E .0219

DEADLINE FOR RECEIPT: Thursday, September 11, 2014

NOTE WELL: This request when viewed on computer extends 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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

In box 6 on the form, please move the adoption date from "Notice not required under G.S." to "Notice Required"

Lines 4, consider re-writing as follows:

"Businesses participating in the program shall comply with the following:

Line 5, add a comma after "symbol"

Lines 6 and 9 thru 10, please define or clarify "written assurance"

Line 12, replace "which" with "that"

Lines 13 thru 15, is this an accurate statement? Could an existing business with a provisional contract lose priority?

Lines 27 and 30, the terms being defined, "rural interchange" and "urban interchange" respectively, should be placed in quotation marks to clarify the term being defined

Line 33, please define or clarify how "with the understanding" is contained within a provisional contract? Consider re-writing as follows:

"Provisional contract shall contain a clause that if a closer business..."

Page 2, line 21, what is the "message specified by the Department"?

Page 2, line 31, replace "which" with "that"

Page 2, line 35, add a comma after "tents"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: August 27, 2014

Page 2, line 37, and page 3, line 1, are the terms "business season" and "off seasons" defined elsewhere by the agency? Are there standards for what qualifies?

Page 3, line 1, please capitalize "department" if the reference is to a defined statutory "department"

Page 3, line 12, please define or clarify how "with the understanding" is contained within a provisional contract? Consider re-writing as follows:

"Provisional contract shall contain a clause that if a fully qualifying..."

Page 3, line 18, "NCDOT" is used for the first time. The term normally used is "Department". Please be consistent.

Page 3, line 18, replace "will" with "shall"

Page 3, line 37, define or delete "regularly"

Page 4, line 2, add a comma after "manufacture"

Page 4, line 13, how are the "other "ATTRACTION" not listed in Item (f)" approved?

Page 4, line 15, replace "include, but are not limited to" with "include the following:"

Page 4, lines 15 thru 19, consider providing these locations in a list format

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: August 27, 2014

1 19A NCAC 02E .0219 is amended as published in 28:21 NCR 2581 as follows:

2
3 **19A NCAC 02E .0219 ELIGIBILITY FOR PROGRAM**

4 Businesses may participate in the program provided said businesses comply with the following criteria:

- 5 (1) The individual business installation whose name, symbol or trademark appears on a business panel
6 shall give written assurance of the business's conformity with all applicable laws concerning the
7 provision of public accommodations without regard to race, religion, color, sex, age, disability, or
8 national origin.
- 9 (2) An individual business, under construction, may apply to participate in the program by giving written
10 assurance of the business's conformity with all applicable laws and requirements for that type of
11 service, by a specified date of opening to be within 60 days of the date of application. No business
12 panel shall be displayed for a business which is not open for business and in full compliance with the
13 standards required by the program. A business under construction shall not be allowed to apply for
14 participation in the program if its participation would prevent an existing open business from
15 participating, unless the existing business qualifies for or has a provisional contract.
- 16 (3) Businesses may apply for participation in the program on a first-come, first-served basis until the
17 maximum number of panels on the logo sign for that service is reached. If a business's panel is
18 removed and space is available on the sign, or one or more of the existing businesses have provisional
19 contracts, the first fully qualifying business to contact the Department shall be allowed priority for the
20 vacant space or the space occupied by a business with a provisional contract.
- 21 (4) The maximum distance that a "GAS", "FOOD", or "LODGING" service may be located from the fully
22 controlled access highway shall not exceed three miles at rural interchange approaches and one mile at
23 urban interchange approaches in either direction via an all-weather road. Where no qualifying services
24 exist within three miles (rural) or one mile (urban), provisional contracts are permitted where the
25 maximum distance may be increased to six miles at rural interchange approaches and three miles at
26 urban interchange approaches, provided the total travel distance to the business and return to the
27 interchange does not exceed twelve miles. A rural interchange is defined as an interchange along a
28 freeway (interstate or other fully-controlled access arterial highway) that is located either in a rural
29 unincorporated area or within the corporate limits of a city or town with a population of less than
30 40,000. An urban interchange is defined as an interchange along a freeway (interstate or other fully-
31 controlled access arterial highway) that is located either in or within one mile of the corporate limits of
32 a city or town with a population equal to or greater than 40,000. Provisional contracts shall be written
33 with the understanding that if a closer business applies, qualifies, and is within the three miles (rural)
34 or one mile (urban) distance as applicable, and there is not otherwise room on the sign for the new
35 business, then the provisional contract of the furthest business from the intersection shall be cancelled
36 and the business panels shall be removed at the annual contract renewal date. The maximum distance

1 for a "CAMPING" or "ATTRACTION" service shall not exceed 15 miles in either direction via an all-
2 weather road.

3 (5) "GAS" and associated services. Criteria for erection of a business panel on a sign shall include:

- 4 (a) licensing as required by law;
- 5 (b) vehicle services for fuel (gas, diesel, or alternative fuels), motor oil, and water;
- 6 (c) on premise public restroom facilities;
- 7 (d) an on premise attendant to collect monies, make change, and make or arrange for tire repairs;
- 8 (e) year-round operation at least 16 continuous hours per day, seven days a week; and
- 9 (f) on premise telephone available for emergency use by the public.

10 (6) "FOOD" service. Criteria for erection of a business panel on a sign shall include:

- 11 (a) licensing as required by law, and a permit to operate by the health department;
- 12 (b) businesses shall operate year-round at least eight continuous hours per day six days per week;
- 13 (c) indoor seating for at least 20 persons;
- 14 (d) on premise public restroom facilities; and
- 15 (e) on premise telephone available for emergency use by the public.

16 (7) "LODGING" service. Criteria for erection of a business panel on a sign shall include:

- 17 (a) licensing as required by law, and a permit to operate by the health department;
- 18 (b) overnight sleeping accommodations consisting of a minimum of 10 units each, including
19 bathroom and sleeping room, except a Lodging business operating as a "Bed and Breakfast"
20 establishment with less than 10 units may participate. "Bed and Breakfast" businesses shall
21 be identified on the Logo signs by a standard message specified by the Department. "Bed and
22 Breakfast" businesses shall only be allowed to participate in the program if the maximum
23 number of qualified Lodging businesses do not request participation in the program and
24 occupy spaces on the Logo signs. All "Bed and Breakfast" businesses shall have provisional
25 contracts;
- 26 (c) adequate parking accommodations;
- 27 (d) year-round operation; and
- 28 (e) on premise telephone available for emergency use by the public.

29 (8) "CAMPING" service. Criteria for erection of a business panel on a sign shall include:

- 30 (a) licensing as required by law, including meeting all state and county health and sanitation
31 codes and having water and sewer systems which have been duly inspected and approved by
32 the local health authority (the operator shall present evidence of such inspection and
33 approval);
- 34 (b) at least 10 campsites with accommodations (including on premise public restroom facilities in
35 a permanent structure) for all types of travel-trailers, tents and camping vehicles;
- 36 (c) adequate parking accommodations;
- 37 (d) continuous operation, seven days a week during business season;

1 (e) removal or masking of said business panel by the department during off seasons, if operated
2 on a seasonal basis; and

3 (f) on premise telephone available for emergency use by the public.

4 (9) "ATTRACTION" service. Criteria for erection of a business panel on a sign for any business or
5 establishment shall include:

6 (a) licensing as required by law;

7 (b) on premise public restroom facilities in a permanent structure;

8 (c) continuously open to the motoring public without appointment at least eight hours per day,
9 five days per week during its normal operating season or the normal operating season for the
10 type of business; where room is available on the sign and a business exists that does not meet
11 the qualifying hours and days of operations or distance, a provisional contract is permitted.
12 Provisional contracts shall be written with the understanding that if a fully qualifying business
13 applies and there is not otherwise room on the sign for the new business, then the provisional
14 contract of the business last on the sign shall be cancelled and the business panel shall be
15 removed at the annual contract renewal date. It is the responsibility of the businesses with
16 provisional contracts to update their contracts to non-provisional contracts (if they meet all
17 qualifications) prior to receiving notice of cancellation. The contract in place on the date
18 NCDOT receives a completed application from a fully qualified business will be the contract
19 used for the decision making purpose.

20 (d) adequate parking accommodations;

21 (e) on premise telephone available for emergency use by the public; and

22 (f) only facilities whose primary purpose is providing amusement, historical, cultural, or leisure
23 activities to the public and are categorized as follows shall be allowed signing:

24 (i) Amusement Parks: Permanent areas open to the general public including at least
25 three of the following activities: roller coasters, entertainment rides, games,
26 swimming, concerts, and exhibitions;

27 (ii) Cultural Centers or Facilities: Locations for cultural events including museums,
28 outdoor theaters, or a facility that exhibits or sells antiques or items painted or
29 crafted by local artists;

30 (iii) Historic Sites: Buildings, structures, or areas listed on the national or state historic
31 register and recognized by the Department as historic attractions or locations;

32 (iv) Leisure or Recreation Activity Areas: Attractions that provide tourists with
33 opportunities such as golfing (excluding miniature golf, driving ranges, chip and putt
34 areas, and indoor golf), horseback riding, wind surfing, skiing, bicycling, boating,
35 fishing, picnicking, hiking, and rafting;

36 (v) Manufacturing Facilities: Locations that manufacture or produce products of interest
37 to tourists and offer tours at least four times daily on a regularly scheduled year-

1 round basis such as candy, ice cream, cookie, or pickle manufacturing facilities.
2 Facilities shall produce or manufacture and exhibit or sell their products at the
3 facilities.

4 (vi) Agricultural Facilities: Locations that provide tours and exhibit or sell their
5 agricultural products or provide on site samples of their products, such as vineyards
6 and regional farmers markets;

7 (vii) Zoological or Botanical Parks and Farms: Facilities that keep living animals or
8 plants and exhibit them to the public;

9 (viii) Natural Phenomena: Naturally occurring areas that are of outstanding interest to the
10 public, such as waterfalls or caverns; and

11 (ix) Motor Sports Facilities: Locations including museums, race tracks, and race team
12 headquarters that exhibit or sell items related to automobile or truck racing.

13 (10) Any other "ATTRACTION" not listed in Item (f) of this Rule shall be approved by the State Traffic
14 Engineer.

15 (11) Ineligible Attractions include, but are not limited to, shopping malls, furniture stores, drug stores,
16 movie theaters; community business, historic, antique, or other districts; appliance stores, automobile
17 or truck dealerships or garages, houses of worship, colleges, schools, real estate offices, sand and
18 gravel facilities, produce stands, nurseries, grocery stores, restaurants, bars, lounges, adult
19 establishments, and adult video, book, and novelty stores. An attraction is not eligible for both Travel
20 Services (Logo) Signing and supplemental guide signing, such as Agriculture Tourism signing, at the
21 same interchange.
22

23 *History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750,*
24 *Subpart A; 23 U.S.C. 131(f);*
25 *Eff. April 1, 1982;*
26 *Amended Eff. August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; October 1, 1991;*
27 *Temporary Amendment Eff. October 13, 2003;*
28 *Amended Eff. October 1, 2014; January 1, 2004.*
29

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Department of Transportation

RULE CITATION: 19A CAC 02E .0702

DEADLINE FOR RECEIPT: Thursday, September 11, 2014

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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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

In box 6 on the form, please move the adoption date from "Notice not required under G.S." to "Notice Required"

Lines 4 and 6, please capitalize "department" if the reference is to a defined statutory "department"

Line 4, delete "establish and"

Line 4, replace "which" with "that"

Line 5, add a comma after "experience"

Lines 7 and 8, properly track the added language in accordance with 26 NCAC 02C .108(6)(a)(ii). Please refer back to the text as published in the Register.

Line 8, replace "is" with "shall be"

Line 9, replace "professional/specialized" with "professional or specialized"

Line 13, delete "also"

Lines 15 and 16, the terms being defined, "Priority Consideration" and "North Carolina" respectively, should be placed in quotation marks to clarify the term being defined

Line 17, replace both "which" with "that"

Line 17, what qualifies as a "majority" of the work? How is the determination made? Who makes the determination?

Abigail M. Hammond
Commission Counsel
Date submitted to agency: August 27, 2014

Line 20, add a space between "(\$50,000)and"

Line 21, delete "thereto"

Line 24, replace "which" with "that"

Line 25, replace "require" with "shall be"

Line 27, add a comma after "conducted"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: August 27, 2014

1 **19A NCAC 02E .0702 is amended as published in 28:21 NCR 2584 as follows:**

2
3 **19A NCAC 02E .0702 SOLICITATION AND AWARD OF CONTRACT**

4 (a) The department shall establish and maintain a "~~Register of Firms~~" "Directory of Transportation Firms" which
5 have the necessary expertise and experience and have expressed a desire to perform ~~for the department in~~
6 professional engineering or other kinds of professional or specialized services for the department in connection
7 with highway transportation construction or repair. Prequalification pursuant to ~~19A NCAC 02D .0801~~ 19A NCAC
8 02E .0703 is ~~not~~ required for inclusion on the "~~Register~~" Directory or award of a contract under this Section.

9 (b) Upon authorization by the ~~Board~~ Secretary of Transportation for the DOT staff to use a professional/specialized
10 firm, a Selection Committee shall be established by the branch manager consisting of at least three members from
11 the DOT staff who are experienced in the type of services to be contracted. For contracts anticipated to
12 exceed ~~ten~~ fifty thousand dollars (~~\$10,000~~) (\$50,000) solicitation for proposals shall be by published advertisement.
13 In addition, solicitation for interest may also be by direct mail to ~~several~~ all firms prequalified for the type of
14 services to be contracted and selected from the register. Directory. North Carolina firms qualified to do the required
15 work shall be given priority consideration. Priority consideration is defined as when one or more proposals are equal
16 in all other aspects, additional consideration for award shall be given to a North Carolina firm. A North Carolina
17 firm is a firm which maintains an office in North Carolina which is permanently staffed and capable of performing a
18 majority of the work required.

19 (c) The firm(s) to be employed shall be selected for each project by the Selection Committee.

20 (d) For contracts having a total cost over ~~ten~~ fifty thousand dollars (~~\$10,000~~) (\$50,000) and
21 for ~~amendments~~ supplemental agreements thereto, award shall be made by the Secretary of Transportation. ~~Board of~~
22 ~~Transportation after consultation with the Advisory Budget Commission.~~

23 (e) ~~Contract amendments that increase a contract cost to ten thousand dollars (\$10,000) or more require approvals~~
24 ~~as specified in Paragraph (d).~~ Supplemental agreements which increase a cost of a project to more than fifty
25 thousand dollars (\$50,000) require approval by the Secretary.

26 (f) In an emergency situation, these Rules may be waived by the Secretary of Transportation or the Secretary's
27 designee pursuant to G.S. 136-28.1(e). A qualified firm may be selected, negotiations conducted and a contract
28 executed by the Secretary of Transportation or the Secretary's designee as required to resolve the emergency
29 conditions.

30 (g) ~~A noncollusion certification shall be executed by prime contractors and lower tier participants in each~~
31 ~~transaction involving public funds. Transactions which require certifications from lower tier participants are:~~

32 (1) ~~Transactions between a prime contractor and a person other than for a procurement contract, for~~
33 ~~goods or services, regardless of type.~~

34 (2) ~~Procurement contracts for goods and services, between a prime contractor and a person, regardless~~
35 ~~of type, expected to equal or exceed the Federal small purchase threshold fixed at 10 U.S.C.~~
36 ~~2304(g) and U.S.C. 253(g) [currently twenty five thousand dollars (\$25,000)] under a prime~~
37 ~~contract; and~~

1 ~~(3) Procurement contracts for goods or services between a prime contractor and a person, regardless~~
2 ~~of the amount under which that person will have a substantive control over the transaction. Such~~
3 ~~include, but are not limited to, bid estimators and contract managers.~~

4 ~~The certifications for both the prime contractor and the lower tier participants shall be on a form furnished by the~~
5 ~~Department of Transportation to comply with Federal Highway Administration requirements, as published in 49~~
6 ~~C.F.R. Part 29. The prime contractor is responsible for obtaining the certifications from the lower tier participants~~
7 ~~and is responsible for keeping them as part of the contract records.~~

8
9 ~~History Note: Authority G.S. 136-28.1(e) and (f); 143B-350(f) and (g);~~
10 ~~Temporary Rule Eff. June 11, 1982 for a Period of 51 Days to Expire on August 1, 1982;~~
11 ~~Eff. August 1, 1982;~~
12 ~~Amended Eff. October 1, 2014; December 1, 2012; December 29, 1993; October 1, 1991; April 1,~~
13 ~~1986; February 1, 1983.~~

REQUEST FOR TECHNICAL CHANGE

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Lines 4, 7, 9, and 25, delete the second "G.S."

In Paragraph (a), the first sentence speaks to contracts awarded pursuant to statutory authority. What is the justification for the second sentence, as this appears to reference making contracts outside of statutory authority? It looks like this sentence is unnecessary and should be deleted. Please clarify.

Lines 10 thru 12, consider re-writing the sentence as follows:

"ensure that the firm is capable of performing the proposed contract."

Lines 15 and 18, define or delete "timely"

Line 18, define or delete "adequately"

For lines 14 thru 21, please clarify how an "applicant shall demonstrate" the requested information. If there is specific information that is necessary for the prequalification process, it must be set forth in the rule.

Line 22, please clarify what information is being updated annually?

Line 23, please clarify what information is being updated every three years to re-qualify?

Line 24, replace "must" with "shall"

Abigail M. Hammond
Commission Counsel
Date submitted to agency: August 27, 2014

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: August 27, 2014

1 19A NCAC 02E .0703 is adopted as published in 28:21 NCR 2584 as follows:

2
3 **19A NCAC 02E .0703 PREQUALIFYING TO AWARD – PROFESSIONAL SERVICES FIRMS**

4 (a) In order to ensure that contracts awarded pursuant to G.S. 136-28.1(f) and G.S. 143-64.31 are awarded
5 to responsible firms, prospective professional services firms shall comply with the rules set forth in this
6 Section except as otherwise provided by law. For professional services contracts other than those specified
7 in G.S. 136-28.1(f) and G.S. 143-64.31, specific project prequalification requirements to satisfy Paragraph
8 (c) of this Rule shall be specified in the documents for specific project contracts.

9 (b) In order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31,
10 all prospective professional services firms shall be prequalified with the Department to ensure that they are
11 responsible and reputable firms capable of effectively and efficiently performing the work awarded to
12 them.

13 (c) The requirements of prequalification are as follows:

14 (1) Applicants shall demonstrate the necessary experience, knowledge, and expertise to
15 perform and timely complete professional services contracts in which they submit or
16 subcontract;

17 (2) Applicants shall demonstrate that they have sufficient financial resources, including
18 available equipment and qualified personnel, to adequately perform and timely complete
19 professional services contracts in which they submit or subcontract;

20 (3) Applicants shall demonstrate that they have the necessary knowledge and expertise to
21 comply with all state and federal laws relating to professional services contracts.

22 (d) Prospective professional services firms shall update their prequalification status annually and shall
23 re-qualify every three years.

24 (e) A prequalified professional services firm must maintain compliance with the rules in this section at all
25 times in order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-
26 64.31. If at any time a professional services firm fails to comply with these rules, the Department shall
27 disqualify the professional services firm from any further contracts until he is able to demonstrate
28 compliance with these requirements by re-qualifying.

29
30 History Note: Authority G.S. 136-28.1(e) and (f); 143-64.31; 143-B-350(f) and (g);

31 Eff. October 1, 2014