

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .0301

DEADLINE FOR RECEIPT: Friday, February 12, 2016

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:

In (a), what is the "standard solicitation document language and terms and conditions established by the State CIO"? Where can this language be found? Is there a cross-reference to another rule that can be provided?

In (a), what is considered to be an emergency or pressing need? I see that there is a separate rule specifically on this issue (09 NCAC 06B .1302), but I don't see what qualifies as such.

In (a), Also, how would it be determined whether circumstances prohibit the standard terms and conditions? Is this entirely left to the discretion of the purchasing agency in the case of an emergency situation or pressing need?

In (b), given that the State CIO now is required to "utilize the purchasing benchmarks established by the Secretary of Administration pursuant to G.S. 143.53.1" in accordance with 143B-1323 as enacted in S.L. 2015-241, is a reference to the special delegation correct? Are the references to the general and special delegations throughout the rules the same as purchasing benchmarks? Please note that this is a potential issue in several rules.

In (c), is the introductory statement of "agency purchases" necessary? It does not appear as though it is as you have not used introductory phrases elsewhere in this Rule.

In (c), are there any minimum requirements for the written procedures for making purchases (such as in accordance with the applicable rules and statutes) or is this left entirely to the discretion of the agency?

In (c), is the reference to the "general or special delegation established by the State CIO" correct?

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

In (c)(2), under what circumstances shall an agency award contracts for purchases? In accordance with the applicable rules and statutes?

In (d), please see the above comments regarding the general and special delegations.

In (d)(1), what are the documents? Are these forms that the purchasing agency is required to use? If so, are the contents of these forms set forth elsewhere in rule or statute? Also, where can these documents be found?

In (d)(4), please see the above comments regarding the general or special delegation.

In (d)(4), what is the "review and approval process" by the State CIO? Is it the process as set forth in (d)(4)(A) through (d)(4)(E)? If so, what is this decision referenced in (d)(4)(C) based upon?

In (d)(5), how is it determined that a contract term for greater than three years would be "advantageous to the State"? Is (or was) this statutory language?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .0301 is readopted without substantive changes as published in 29:24 NCR as follows:

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 CIO. 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.

(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 ~~Section~~; Section).

(c) Agency Purchases: The agency head, or designee, shall set forth in writing procedures for making purchases. 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 or special 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 ~~ITS~~; 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 ~~ITS~~ 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 or special 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.~~; *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.

History Note: Authority G.S. 143-135.9; ~~147-33.76(b1); 143B-1302(c); 147-33.91; 143B-1336; 147-33.95; 143B-1323;~~
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. September 1, 2013.
Readopted Eff. March 1, 2016.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .0302

DEADLINE FOR RECEIPT: Friday, February 12, 2016

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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:

In Item (1), please change the semi-colon at the end to a colon.

In (1)(a), please change "determines" to "shall determine"

Please change the semi-colon to a colon at the end of (1)(b). Also in (1)(b), what is meant by "other types as may be approved by the State CIO"? Other types of solicitation? This phrase seems misplaced and does not provide any information as to how or what other types may be approved.

In (1)(b)(ii), what is a "technically acceptable method"? Is there cross-reference available?

In (1)(b)(iii), please change "Requests for Quotation are used to" to "Requests for Quotation, used to..." for purposes of consistency.

In (1)(b)(iv), under what circumstances would the State need to solicit solutions-based offers? Is there a cross-reference available? Also, when would "negotiations with one or more vendors... be needed"?

In (1)(d), what are the "published solicitation terms"? Where can these be found?

In (1)(e), how is it determined whether solicitations will allow for negotiation after receipt of offers?

In (1)(f), are the referenced "stated solicitation selection method and evaluation criteria" those contained in the solicitation?

In (1)(g), what are the "procedures appropriate to the designated method of source selection? Is this referencing the other options available in this Rule (2) and (3) or something else?

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

In (1)(i), please change “must” to “shall.”

In (2), by whom is the determination made that the trade off method of source selection would be in the best interest of the State?

In (2)(c), please change “would” to “shall.”

Please add an “and” at the end of (2)(d).

In (4), what is the approval process and what is it based upon? Is this set forth elsewhere in rule or statute?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .0302 is readopted without substantive changes as published in 29:24 NCR as follows:

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;
 - (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 published solicitation terms;
 - (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

1 include a best value ranking process, the purchasing agency shall rank offers by using
2 any consistent rating or scoring methodology, which may include adjectival, numerical,
3 or ordinal rankings. The purchasing agency's evaluation shall document relative
4 strengths, deficiencies, weaknesses, and risks supporting its award recommendation.
5 Best-Value evaluation shall include evaluating quality factors such as:

- 6 (i) State's total cost of ownership, meaning summation of the State's total cost for
7 acquiring, operating, maintaining, and supporting a product or service over its
8 projected lifetime to include competitive price data; evaluation of the offeror's
9 cost for actual and anticipated components comprising its quotation, as
10 applicable; and value-added conditions or additional services included in the
11 offer;
- 12 (ii) Technical merit of the offer including as applicable, consideration for
13 consistency and compatibility of the proposed solution with the State's strategic
14 program direction; maximum facilitation of data exchange or systems
15 integration; effectiveness of business solution and approach to solicitation's
16 specific purpose or objective; delivery and implementation schedules; and
17 guarantees, warranties, and return policies; and
- 18 (iii) Probability of the offeror performing the work as stated in the solicitation on
19 time, in a manner that accomplishes the stated intent and business objectives,
20 and that maintains compliance with industry standards including, as applicable,
21 consideration of the offeror's financial stability; program or industry experience;
22 past performance with the State; expertise with similar projects, solutions, or
23 technologies; its proven development methodologies and tools, innovative use of
24 technologies; or key personnel and depth of additional resources, compared to
25 scope and intent of business need stated in the solicitation; *etc.*;

26 (g) The purchasing agency may communicate with offerors after receipt of offers and in
27 accordance with instructions, procedures and terms set forth in the solicitation as well as
28 those procedures appropriate to the designated method of source selection. If negotiation
29 is permitted in the solicitation, the purchasing agency may also allow offerors to submit
30 best and final offers subsequent to negotiated changes in the initial offer or previous
31 offer;

32 (h) The purchasing agency evaluation committee shall determine a final ranking of all offers
33 under consideration using only the criteria set forth in the solicitation. The purchasing
34 agency evaluation committee shall rank all responsive and responsible offerors from most
35 advantageous to least advantageous to the State, and document such in its final award
36 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.~~ 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

1 quality of good or service needed at the best possible price, delivery, or terms and
2 conditions.

- 3 (4) Other competitive best value source selection methodologies may be used if they are determined
4 to be advantageous to the state and are approved for use by the State CIO.

5
6 *History Note: Authority G.S. 143-135.9; ~~147-33.76(b1);~~ 143B-1302(c); ~~147-33.91;~~ 143B-1336; ~~147-33.95;~~*
7 *143B-1323; ~~147-33.101;~~ 143B-1328;*
8 *Temporary Adoption Eff. January 1, 2000;*
9 *Eff. August 1, 2000;*
10 *Amended Eff. September 1, 2013.*
11 *Readopted Eff. March 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .0314

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In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(2), please delete or define "reasonable."

In (b)(4)(A), what is meant by "to the extent practicable"? Please delete or define.

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .0314 is readopted without substantive changes as published in 29:24 NCR as follows:

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;

- 1 (C) Required advertisement and publication data shall include all relevant information
2 pertaining to contacts and due dates, and the complete solicitation document and any
3 attachments (*i.e.*, specifications; requirements; terms and conditions; price model; *etc.*);
- 4 (D) If a purchasing agency head (or his/her designee) determines that it is not feasible to
5 electronically transmit (due to file size, *etc.*) a particular solicitation document or
6 attachment(s) through the required method (*e.g.*, a procurement library, architecture
7 reference documents, price model forms, *etc.*), then the purchasing agency must still
8 electronically transmit a summary notice or advertisement through the designated IT
9 procurement website. In such instance, the advertisement shall include the required
10 information with the addition of a brief explanation for why the entire solicitation is not
11 included, and shall instruct anyone inquiring about the solicitation to contact the
12 purchasing agency for a copy of the actual solicitation document and any respective
13 attachments.
- 14 (2) The required advertisement information shall include:
- 15 (A) Purchasing agency name and website reference, and designated IT procurement website
16 reference;
- 17 (B) Assigned purchasing agency contact's name, telephone number, and electronic mail
18 address;
- 19 (C) Location address for delivery/receipt of offers;
- 20 (D) Solicitation identification number or reference;
- 21 (E) Title (*i.e.*, scope or short description of the good or service solicited);
- 22 (F) Due date and time for solicitation clarifications or questions;
- 23 (G) Date, time, and location for opening of offers received;
- 24 (H) In addition to the specifications, offer terms and conditions, award terms and conditions,
25 *etc.*, the solicitation document must furnish the due date and time; method of request,
26 *e.g.*, regular mail, or electronically via e-mail or facsimile, *etc.*; and an address for receipt
27 of requests for solicitation clarifications or questions; and
- 28 (I) Conference or site visit date, time and location; assigned meeting contact person and that
29 contact person's telephone number and electronic mail address; and other relevant
30 information relating to attendance. If no conference or site visit is scheduled, then this
31 shall be stated in the advertisement and the solicitation document.
- 32 (3) Addenda or Changes: The same advertisement method that is approved and followed for
33 publishing a solicitation document must also be followed for publishing any respective addenda or
34 changes to the solicitation and resulting notice of award, unless an exception is permitted
35 Subparagraph (5) of this Paragraph.
- 36 (4) Notices of Award:

- 1 (A) To the extent practicable, the purchasing agency shall simultaneously issue an individual
2 notice of award to all offerors responding to the respective solicitation and shall publish
3 the notice of award via the approved method of advertisement for that solicitation and
4 addendum Paragraph (a) of this Rule;
- 5 (B) Notice of Award shall summarize the resulting contract award information including
6 identification of the advertised solicitation; the awardee name and location; scope, start
7 and end dates; authorized value through original end date; and renewal options.
- 8 (5) Exceptions to Required Method:
- 9 (A) When the purchasing agency (or its designee) deems there is a valid reason not to publish
10 via the State's designated IT procurement website, the purchasing agency may request
11 from ~~HFS~~ DIT a waiver of the required method for advertising, publishing, and notifying;
- 12 (B) Valid reasons to request a waiver to the required method include computer failure and
13 networking difficulties;
- 14 (C) The purchasing agency's request for waiver of required method shall include the rationale
15 for requesting, a description of a proposed alternate method, length of time proposed for
16 advertising, and explanation if the solicitation document and any attachments or addenda
17 will not be included or published with the advertisement;
- 18 (D) The purchasing agency's proposed alternate method to the State's designated IT
19 procurement website must be via other medium widely distributed or commonly
20 available to the public, such as publishing in a newspaper, *etc.*;
- 21 (E) The rationale for requesting waiver of required advertising method, requested alternate
22 method, and respective ~~HFS~~ DIT approval, shall be documented and become part of the
23 procurement file, open for public inspection after award.
- 24

25 *History Note: Authority G.S. ~~147-33.76(b1)~~; 143B-1302(c); 143B-1323;*
26 *Temporary Adoption Eff. January 1, 2000;*
27 *Eff. August 1, 2000;*
28 *Amended Eff.; September 1, 2013.*
29 *Readopted Eff. March 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .0315

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In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), under what circumstances would a solicitation require offerors to attend a mandatory conference or site visit? Is there an available cross-reference to another rule or statute providing additional information regarding this requirement?

In (b), what is meant by "as much as is practicable"? Please delete or define.

In (b), what is meant by "and endeavor to ascertain whether there is any competition available"? Please simplify this language.

In (b), what is meant by "time permitting"? Please delete or define. Also, how is it determined whether something will be "deemed to be to the advantage of the State"?

In (c), what details of the conference or site visit is the purchasing agency required to document? I see that .1402 provides the requirement that some documents be retained in the procurement file, but where is the requirement regarding conferences and site visits? Is this already included?

What authority do you have to determine that "verbal communications from whatever source are of no force or effect"? This appears to be a legal conclusion.

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .0315 is readopted without substantive changes as published in 29:24 NCR as follows:

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 investigate, as much as is practicable, why only one potential offeror attended, and endeavor to ascertain whether there is any competition available. If it is determined that competition is available, time permitting, 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 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. Verbal communications from whatever source are of no force or effect.

*History Note: Authority G.S. ~~147-33.76(b1)~~; 143B-1302(c); 143B-1323;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. September 1, 2013.
Readopted Eff. March 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .0316

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In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), what is an agency's "general delegation"? Is this a dollar amount previously addressed by 09 NCAC 06B .1304? Also, by under, do you mean "under" or "pursuant to"?

In (a), what are the requirements of best value procurement? Is it those set forth in 09 NCAC 06B .0302?

In (b), what is meant by "appear to be"? Would changing "appear to be" to "are" be appropriate?

In (b), are the purchasing agency's "business needs" required to be set forth in the solicitation? Would it be appropriate and accurate to say "the purchasing agency may then conduct negotiations with sources of supply that are capable of satisfying the purchasing agency's business needs as set forth in the solicitation"?

In (b), please delete or define "directly."

In (b), what is considered to be the "standard language"? Where can this be found?

In (d)(3), please delete or define "appropriate."

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .0316 is proposed for readoption as follows:

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 ~~ITS~~, 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 language and terms and conditions issued by ~~ITS~~, 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 ~~ITS~~, 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. ~~147-33.76(b1)~~; 143B-1302(c); 143B-1323;
Eff. September 1, 2013.
Readopted Eff. March 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .0405

DEADLINE FOR RECEIPT: Friday, February 12, 2016

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:

In (a), how is it determined whether a debriefing will take place? Is this set forth in the solicitation?

In (b), by "not then" do you mean "not available at the time of the debriefing"?

In (c)(1)(B), what is meant by "to the maximum extend practicable"? Please delete or define.

In (c)(1)(C), what is meant by a "delayed debriefing"? Please delete or define "delayed." Also, by whom and how is "good cause" determined.

Please add an "and" at the end of (c)(5)(D).

Is providing the information contained in (c)(6) left entirely to the discretion of the purchasing agency?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .0405 is readopted without substantive changes as published in 29:24 NCR as follows:

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) To the maximum extent practicable, 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. ~~147-33-76(b1)~~; 143B-1302(c); 143B-1323;
Eff. September 1, 2013.
Readopted Eff. March 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .0701

DEADLINE FOR RECEIPT: Friday, February 12, 2016

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:

In (b) and (c), please end "term contracts" and "convenience contracts" with either a colon or a period.

In (b)(2), will the State CIO enter into a term contract in accordance with the applicable rules and statutes?

In (b)(2), how will the state CIO determine whether authorization will be granted to purchase goods or services from another source?

In (b)(3), should there be a comma at the end of "agency's general delegation?" Did you mean the "purchasing agency's general delegation"?

In (b)(3), are the "determining factors" those contained in (a)?

In (f), how and by whom is the decision made that the State's best interests are served?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .0701 is readopted without substantive changes as published in 29:24 NCR as follows:

SECTION .0700 - CONTRACTS

09 NCAC 06B .0701 CONTRACTS ESTABLISHED BY ~~HFS~~ 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 purchasing 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 the purchasing 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 purchasing 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.

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*History Note: Authority G.S. ~~147-33.76(b1)~~; 143B-1302(c); 143B-1323;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. September 1, 2013.
Readopted Eff. March 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .0901

DEADLINE FOR RECEIPT: Friday, February 12, 2016

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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:

In (a), how is the determination made that the public interest would be served by limiting or waiving competition?

In (a), what is the approval process for the limited or waived competition if the procurement is greater than the agency's delegation? How does the State CIO make the determination?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .0901 is readopted without substantive changes as published in 29:24 NCR as follows:

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 public interest 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, requests for limited or waived competition shall be submitted 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. ~~147-33.76(b1)~~; 143B-1302(c); 143B-1323;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. September 1, 2013.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .1302

DEADLINE FOR RECEIPT: Friday, February 12, 2016

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:

In (a), what is considered to be an "emergency or pressing need"? By whom and how is this determination made? Please note that including some additional information here would eliminate issues raised in other rules concerning emergency or pressing needs.

In (b), how does a purchasing agency know what its delegation is and whether an estimated expenditure is over its delegation? Is there a cross-reference available? How is this affected by the deletion of the \$25,000 general purchasing delegation language in 09 NCAC 06B .1304(a)?

This History Note is missing some information, please update accordingly.

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .1302 is amended as published in 29:24 NCR as follows:

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. ~~The State CIO shall report such purchases of goods that exceed the benchmark in 09 NCAC 06A .0103 to the Board of Awards as a matter of record.~~

*History Note: Authority G.S. 143-52.1; ~~147-33.76(b1)~~; 143B-1302(c); 143B-1323;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Recodified from 09 NCAC 06B .1102 Eff. March 19, 2008;
Amended Eff. March 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .1304

DEADLINE FOR RECEIPT: Friday, February 12, 2016

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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:

In (a), to what "general delegation" is "this" general delegation referring? It appears as though "this general delegation" was previously addressed in the now deleted (a) (\$25,000).

In (b), please delete the comma in between "general delegation" and "to the IT benchmark..." Also, please be consistent in your use of "Secretary of Administration" versus "the DOA Secretary."

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .1304 is amended as published in 29:24 NCR, with changes, as follows:

09 NCAC 06B .1304 GENERAL DELEGATIONS

~~(a) The general purchasing delegation for a purchasing agency shall be twenty five thousand dollars (\$25,000) unless specific authorization is given by the State CIO.~~

~~(b)~~ (a) The State CIO may suspend, rescind, lower or raise this general delegation for a specific agency, up to the benchmark established ~~under Rule 09 NCAC 06A .0103~~ 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.

~~(c)~~ (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. ~~147-33.76(b1)~~; 143B-1302(c); 143B-1323;

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. March 1, 2016; September 1, 2013.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Information Technology

RULE CITATION: 09 NCAC 06B .1402

DEADLINE FOR RECEIPT: Friday, February 12, 2016

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:

In (b)(2), by whom is the approval being made?

In (b)(3), how does "written documentation of verbal offer received" comport with "Verbal communications from whatever source are of no force or effect" contained in 09 NCAC 06B .0315 (assuming there is authority for this phrase).

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

Amber Cronk May
Commission Counsel
Date submitted to agency: February 1, 2015

09 NCAC 06B .1402 is amended as published in 29:24 NCR as follows:

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) Board of Awards' decision records; and~~
- ~~(15)~~ (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. ~~147-33.95(f)~~; 143B-1323;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Recodified from 09 NCAC 06B .1202 Eff. March 19, 2008;
Amended Eff. March 1, 2016; September 1, 2013.*