

1 09 NCAC 06B .0301 is readopted without substantive changes as published in 29:24 NCR as follows:
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3 **SECTION .0300 – PROCUREMENT AUTHORIZATION AND PROCEDURES**

4 **09 NCAC 06B .0301 PROCUREMENT PROCEDURES**

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

11 (b) All information technology purchases involving the expenditure of state funds by the purchasing agency shall be
12 competitively bid in conformity with the "Best Value" information technology procurement requirements in G.S.
13 143-135.9 and Rule .0302 of this Section. Exemptions may be granted by the State CIO where limited competition,
14 waiver of competition (See Rule .0901 of this Subchapter), special delegation (see Rules .1303 and .1304 of this
15 Section), exemption, or an emergency purchase is permitted by rule. Purchasing agency procurements not included
16 in a statewide term, convenience, enterprise contract, or master agreement established by the State CIO shall comply
17 with the applicable general delegations and procedures (Rule .1304 of this ~~Section~~: Section.) Subchapter).

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

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

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

- 30 (1) The purchasing agency shall issue documents soliciting, requesting or inviting offers, as published
31 by ~~HFS~~; DIT;
32 (2) The purchasing agency shall include in solicitation documents standard language, including
33 general or standard terms and conditions for technology purchases as published by ~~HFS~~ DIT and in
34 conformance with Rule .0316 of this Section. If additional terms and conditions are used, they
35 shall not conflict with standard terms and conditions published pursuant to 09 NCAC 06A .0101
36 unless prior written approval is obtained under Rule .0201 of this Subchapter; and
37 (3) The purchasing agency may also request from the State CIO, known vendor sources amenable to
38 competing for award of various State procurements.

- 1 (4) For purchases exceeding an agency's general ~~or special~~ delegation, the purchasing agency shall
2 submit drafts of solicitation documents to the State CIO for approval prior to proceeding with the
3 procurement process. The State CIO shall then engage in a review and approval process of such
4 solicitation documents to ensure that proposed and actual IT procurements are advantageous to the
5 State:
- 6 (A) After completing review and evaluation of offers received, the purchasing agency may
7 prepare and submit to the State CIO for review a draft recommendation for award;
 - 8 (B) After completing review and evaluation of offers received, the purchasing agency shall
9 submit to the State CIO a written, final recommendation for award, including a copy of
10 all offers received and all supporting documentation with its recommendation;
 - 11 (C) The State CIO shall then review and either approve the recommendation or direct
12 modification to the recommended procurement action as deemed in the best interest of
13 the State or as directed by the State CIO, (e.g., award, cancellation, rebid, negotiation
14 with known sources of supply, ~~etc.~~; *etc.*);
 - 15 (D) The State CIO shall notify the purchasing agency of any decision regarding that
16 recommended procurement action; and
 - 17 (E) Upon receipt of the State CIO notification, the purchasing agency shall proceed with the
18 respective procurement action as directed.
- 19 (5) A contract term shall not be awarded for more than three years including extensions and renewals,
20 without the prior approval of the State CIO, based on a determination that it is advantageous to the
21 State. State pursuant to best value procurement.

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23 *History Note: Authority G.S. 143-135.9; 147-33.76(b1); ~~[143B-1302(e);]~~ 143B-1322(c); 147-33.91; ~~[143B-~~
24 ~~1336;]~~ 143B-1350; 147-33.95; ~~[143B-1323;]~~ 143B-1351(a);*
25 *Temporary Adoption Eff. January 1, 2000;*
26 *Eff. August 1, 2000;*
27 *Amended Eff. September 1, 2013.*
28 *Readopted Eff. March 1, 2016.*

1 09 NCAC 06B .0302 is readopted without substantive changes as published in 29:24 NCR as follows:

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3 **09 NCAC 06B .0302 METHODS OF SOURCE SELECTION**

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

- 6 (1) The purchasing agency shall use the following steps for best value procurements;
- 7 (a) The purchasing agency determines the appropriate best value bidding method through
8 development of one of the solicitations set forth in Sub-item (1)(b) of this Rule;
 - 9 (b) The following types of solicitations are available from the State CIO or other types as
10 may be approved by the State ~~CIO~~; **CIO pursuant to applicable laws and regulations:**
 - 11 (i) Requests for Information (RFI), used for gathering information to prepare a
12 solicitation for offers;
 - 13 (ii) Invitations for Bid (IFB), used when the best value recommendation for award is
14 based on the lowest priced or highest qualified and technically acceptable
15 selection method;
 - 16 (iii) Requests for Quotation are used to contract with a single vendor or a limited
17 group of vendors for purchases of specific goods and services or small purchases
18 of goods, or pursuant to a waiver of competition that satisfies Rule .0901 of this
19 Subchapter;
 - 20 (iv) Requests for Proposal (RFP), used for purchases when the State needs to solicit
21 solutions-based offers, where negotiations with one or more vendors may be
22 needed, or when the best value recommendation for award is based on ranking
23 all offers and will not be based solely on the lowest priced-technically
24 acceptable source;
 - 25 (v) One-Step solicitation, used when both the technical step one offer and price step
26 two offer are submitted at the same time;
 - 27 (vi) Two-Step solicitation, used when the technical step one offer and price step two
28 offer are submitted and evaluated separately;
 - 29 (c) The purchasing agency shall develop, advertise, and publish its solicitation for offers in
30 accordance with the rules of this Subchapter;
 - 31 (d) The purchasing agency shall hold any scheduled conferences or site visits in accordance
32 with ~~published standard~~ solicitation ~~terms~~; **document language established by the State**
33 **CIO**;
 - 34 (e) The purchasing agency shall receive offers in response to its solicitation and it shall then
35 conduct a public bid opening and prepare a tabulation of all offers received. For
36 solicitations that allow for negotiation after receipt of offers, only the names of offerors
37 shall be disclosed at the public bid opening or on the tabulation of offers received;

- 1 (f) The purchasing agency's evaluation committee shall evaluate offers in accordance with
2 the stated solicitation selection method and evaluation criteria. For solicitations that
3 include a best value ranking process, the purchasing agency shall rank offers by using
4 any consistent rating or scoring methodology, which may include adjectival, numerical,
5 or ordinal rankings. The purchasing agency's evaluation shall document relative
6 strengths, deficiencies, weaknesses, and risks supporting its award recommendation.
7 Best-Value evaluation shall include evaluating quality factors such as:
- 8 (i) State's total cost of ownership, meaning summation of the State's total cost for
9 acquiring, operating, maintaining, and supporting a product or service over its
10 projected lifetime to include competitive price data; evaluation of the offeror's
11 cost for actual and anticipated components comprising its quotation, as
12 applicable; and value-added conditions or additional services included in the
13 offer;
 - 14 (ii) Technical merit of the offer including as applicable, consideration for
15 consistency and compatibility of the proposed solution with the State's strategic
16 program direction; maximum facilitation of data exchange or systems
17 integration; effectiveness of business solution and approach to solicitation's
18 specific purpose or objective; delivery and implementation schedules; and
19 guarantees, warranties, and return policies; and
 - 20 (iii) Probability of the offeror performing the work as stated in the solicitation on
21 time, in a manner that accomplishes the stated intent and business objectives,
22 and that maintains compliance with industry standards including, as applicable,
23 consideration of the offeror's financial stability; program or industry experience;
24 past performance with the State; expertise with similar projects, solutions, or
25 technologies; its proven development methodologies and tools, innovative use of
26 technologies; or key personnel and depth of additional resources, compared to
27 scope and intent of business need stated in the solicitation; *etc.*;
- 28 (g) The purchasing agency may communicate with offerors after receipt of offers and in
29 accordance with instructions, procedures and terms set forth in the solicitation as well as
30 those procedures appropriate to the designated method of source selection. If negotiation
31 is permitted in the solicitation, the purchasing agency may also allow offerors to submit
32 best and final offers subsequent to negotiated changes in the initial offer or previous
33 offer;
- 34 (h) The purchasing agency evaluation committee shall determine a final ranking of all offers
35 under consideration using only the criteria set forth in the solicitation. The purchasing
36 agency evaluation committee shall rank all responsive and responsible offerors from most

- 1 advantageous to least advantageous to the State, and document such in its final award
2 recommendation;
- 3 (i) Award must be made to the responsive and responsible offeror whose offer is determined
4 to be the most advantageous and best value to the State, using all evaluation criteria set
5 forth in the solicitation (*e.g.*, if the lowest price or highest qualified technically acceptable
6 method is designated in the solicitation, then award must be made to the responsive and
7 responsible offeror with the lowest price or highest qualified technically accepted
8 ~~method~~ method.)
- 9 (2) A trade off method of source selection may be utilized when it is in the best interest of the State to
10 award a contract using a comparative evaluation of technical merit and costs. For a solicitation
11 that designates the trade-off source selection method, the following shall apply:
- 12 (a) All factors that will affect the contract award recommendation and the relative
13 importance of each shall be stated as evaluation criteria in the published solicitation;
- 14 (b) The solicitation shall state the importance or numerical weight of all evaluation criteria
15 including consideration of price and total cost of ownership;
- 16 (c) Offers shall be ranked according to the evaluation criteria stated in the solicitation. The
17 relative overall ranking of any offer may be adjusted up or down when considered with,
18 or traded-off against, other non-price factors. For example, an offer with the lowest price
19 when compared to other offers would receive the best ranking in the price evaluation
20 category. However, if other non-price evaluation factors received low rankings, the
21 overall ranking of the offer would be reduced;
- 22 (d) Clarifications are permitted;
- 23 (e) If permitted in the solicitation terms, the purchasing agency may also use negotiations, or
24 other communications, after receipt of an offer.
- 25 (3) The lowest priced or highest qualified technically acceptable source selection method may be used
26 when best value is expected to result from selection of the highest qualified or technically
27 acceptable offer with the lowest evaluated price. When this method is designated in a solicitation,
28 the following shall apply:
- 29 (a) The factors that establish the requirements for technical acceptability shall be set forth in
30 the solicitation's evaluation criteria. Evaluation criteria shall specify that the award will
31 be made on the basis of the lowest evaluated price or most highly qualified technically
32 acceptable of those offers that meet or exceed the acceptability requirements for non-
33 price factors;
- 34 (b) Trade-offs between price and non-price factors are not permitted;
- 35 (c) Proposals are evaluated for acceptability but are not ranked using the non-price factors.
- 36 (d) Clarifications are permitted;

1 (e) Negotiations are permitted with this selection method for purchases over the purchasing
2 agency's general delegation, when so specified in the published solicitation. The
3 purchasing agency may negotiate with a potential vendor(s) in an effort to acquire the
4 quality of good or service needed at the best possible price, delivery, or terms and
5 conditions.

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

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9 *History Note:* Authority G.S. 143-135.9; ~~147-33.76(b1); [143B-1302(c); 143B-1322(c); 147-33.91; [143B-~~
10 ~~1336;] 143B-1343; 147-33.95; [143B-1323;] 143B-1350; 147-33.101; [143B-1328;] 143B-1355;~~
11 *Temporary Adoption Eff. January 1, 2000;*
12 *Eff. August 1, 2000;*
13 *Amended Eff. September 1, 2013.*
14 *Readopted Eff. March 1, 2016.*

1 09 NCAC 06B .0314 is readopted without substantive changes as published in 29:24 NCR as follows:

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3 **09 NCAC 06B .0314 ADVERTISEMENT AND NOTICE**

4 (a) Requirement to Advertise, Publish and Notify:

5 (1) Solicitations: To maintain transparency and encourage competition for award of business, the
6 purchasing agency shall advertise and publish solicitations for purchases exceeding the general
7 delegation as established by the State CIO for no less than 10 calendar days, unless the State CIO
8 waives the requirement for advertising;

9 (2) Addenda or Changes: Any changes or addenda to a solicitation must be advertised and published
10 with enough time to allow for reasonable consideration and possible incorporation of any changes
11 into potentially competing vendors' response offers. Any changes or addenda to a solicitation
12 must be advertised and published for no less than two business days from the scheduled offer due
13 and opening date, unless the State CIO waives the requirement to advertise and publish changes or
14 addenda to a solicitation;

15 (3) Notices of Award: To maintain transparency and promote future competitiveness, the notice of
16 award shall be advertised for no less than 30 calendar days, unless the State CIO waives the
17 requirement to advertise, publish, and issue a notice of award;

18 (4) Waiver of requirement to advertise and notify must fall under one of the following conditions in
19 order for the State CIO to waive the requirement:

20 (A) Acquisition of commodities or services that are subject to rapid price fluctuations or
21 immediate acceptance;

22 (B) Emergency situations or pressing needs;

23 (C) Acquisition of goods or services needed for any ongoing job, task, or project;

24 (D) Acquisition of goods or services where performance or price competition is not available;

25 (E) Any determination that no useful purpose would be served by requiring such; or

26 (F) Exceptions identified under Rule .1303 of this Subchapter.

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

29 (1) Solicitations:

30 (A) The purchasing agency shall electronically advertise and continually publish solicitations
31 via posting to the State's designated IT procurement website, unless a waiver of
32 advertisement method is granted by the State CIO pursuant to waiver of competition
33 under Rule .0901 of this Subchapter, for cooperative agreements under Rule .1006 of this
34 Subchapter, or direct negotiation with vendors as permitted by Rule .0316 of this
35 Subchapter;

36 (B) This Rule does not preclude a purchasing agency from soliciting offers by additional
37 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 ~~FFS~~ 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 ~~FFS~~ 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;~~ 143B-1322; 143B-1350;
26 *Temporary Adoption Eff. January 1, 2000;*
27 *Eff. August 1, 2000;*
28 *Amended Eff.; September 1, 2013.*
29 *Readopted Eff. March 1, 2016.*

1 09 NCAC 06B .0315 is readopted without substantive changes as published in 29:24 NCR as follows:

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3 **09 NCAC 06B .0315 MANDATORY CONFERENCES/SITE VISITS**

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

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

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

14 (d) Any and all questions or clarifications by a potential offeror regarding a solicitation document shall be
15 addressed to the purchasing agency contact so designated in the solicitation. Any and all revisions to the solicitation
16 document shall be made only by published addendum from the purchasing agency. ~~Verbal communications from~~
17 ~~whatever source are of no force or effect.~~

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19 *History Note: Authority G.S. 147-33.76(b1); [143B-1302(c); 143B-1323;] 143B-1233(c); 143B-1350;*

20 *Temporary Adoption Eff. January 1, 2000;*

21 *Eff. August 1, 2000;*

22 *Amended Eff. September 1, 2013.*

23 *Readopted Eff. March 1, 2016.*

1 09 NCAC 06B .0316 is proposed for readoption as follows:

2
3 **09 NCAC 06B .0316 NEGOTIATION**

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

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

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

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

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

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

33
34 *History Note:* Authority G.S. 147-33.76(b1); [~~143B-1302(e); 143B-1323;~~] 143B-1322(c); 143B-1340(f); 143B-
35 1343; 143B-1350;

36 *Eff. September 1, 2013.*

37 *Readopted Eff. March 1, 2016.*

1 09 NCAC 06B .0405 is readopted without substantive changes as published in 29:24 NCR as follows:

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3 **09 NCAC 06B .0405 DEBRIEFING OFFERORS**

4 (a) Pre- or post-award-debriefings of successful and unsuccessful offerors may be completed by personal meeting
5 or by written or electronic communication (*e.g.*, telephone, email, *etc.*).

6 (b) Debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other
7 offerors. Moreover, debriefing shall not reveal any information not then available for public inspection or properly
8 designated as confidential in accordance with Rule .1001 of this Subchapter, the N.C. Public Records Law, or any
9 other applicable laws.

10 (c) If debriefing is authorized by terms of the solicitation:

11 (1) The purchasing agency shall implement the debriefing process as follows;

12 (A) Include an official summary of the debriefing in the record, per Rule .1402 of this
13 Subchapter, by the protest-period due-date;

14 (B) ~~To the maximum extent practicable, schedule~~ **Schedule** a debriefing within five business
15 days after receipt of an offeror's written request for a debriefing;

16 (C) If requested, grant at its discretion, rejected offeror(s) a delayed debriefing for any good
17 cause shown;

18 (2) Accommodation of a competing offeror request for delayed debriefing does not extend the due
19 dates for filing protests.

20 (3) All competing offerors may request a debriefing by submission of a written request to the
21 purchasing agency not more than three business days from notice of award date.

22 (4) Offeror may, if notified that it is not included in the competitive range:

23 (A) Request a pre-award debriefing by delivering such request to the purchasing agency not
24 more than three business days after the notice of rejection date; or

25 (B) Request a post-award debriefing by delivering a request for such not more than three
26 business days after the later of the notice of rejection date or notice of the award date.

27 (5) Debriefing shall include review of the committee's evaluation of vendor's proposal/offer per terms
28 of the solicitation, including:

29 (A) Any weaknesses, deficiencies, or risks to the purchasing agency, identified in evaluation
30 of the offeror's proposal;

31 (B) Evaluated cost or price (including unit prices) and the State's total cost of ownership;

32 (C) Evaluated vendor responsibility to proposal, including past performance information,
33 *etc.*, as applicable;

34 (D) Evaluated vendor responsiveness and the technical merit of its proposal;

35 (E) Responses to relevant questions from the vendor about whether source selection
36 procedures, applicable regulations, or other applicable authorities, were followed.

1 (6) If debriefing is post-award, the information must include the items listed in Subparagraph (c)(4) of
2 this Rule and may also include:

3 (A) Overall ranking of all offerors; and

4 (B) A summary of the evaluation and rationale for award to the successful offeror.

5

6 *History Note:* Authority G.S. ~~147-33.76(b1); [143B-1302(e); 143B-1323;]~~ 143B-1322(c); 143B-1350;

7 *Eff. September 1, 2013.*

8 *Readopted Eff. March 1, 2016.*

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~~ 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~~ 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 that~~ agency in accordance with the determining factors set forth in this Rule.

(c) Convenience ~~Contracts~~ 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;~~] 143B-1322(c); 143B-1350;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. September 1, 2013.
Readopted Eff. March 1, 2016.

09 NCAC 06B .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 of the State by the State CIO, competition may be limited or waived where a factual basis demonstrates support of one or more of the conditions set forth in Paragraph (b) of this Rule. If the procurement is within a purchasing agency's general delegation, then the purchasing agency may waive competition in conformance with this Rule. If the procurement is greater than the agency's delegation, the agency shall submit a written request including facts supporting conditions set forth in Paragraph (b) of this Rule for limited or waived competition 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(e); 143B-1323;] 143B-1322(c); 143B-1350;
Temporary Adoption Eff. January 1, 2000;

- 1 *Eff. August 1, 2000;*
- 2 *Amended Eff. September 1, 2013.*
- 3 *Readopted Eff. March 1, 2016.*

1 09 NCAC 06B .1302 is amended as published in 29:24 NCR as follows:

2 **09 NCAC 06B .1302 EMERGENCY SITUATIONS OR PRESSING NEED**

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

4 (b) When emergency or pressing need action is necessary, and the estimated expenditure is over the purchasing
5 agency's delegation, prior verbal approval shall be obtained from the State CIO unless the purchase must be made
6 outside of business hours, during holidays or when state offices are otherwise closed. Subsequently, if the expenditure
7 is over the purchasing agency's delegation, an explanation of the emergency or pressing need purchase shall be
8 reported in writing to the State CIO. ~~The State CIO shall report such purchases of goods that exceed the benchmark
9 in 09 NCAC 06A .0103 to the Board of Awards as a matter of record.~~

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11 *History Note:* Authority G.S. 143-52.1; ~~147-33.76(b1); [143B-1302(e); 143B-1323;]~~ 143B-1322(c); 143B-1350;

12 *Temporary Adoption Eff. January 1, 2000;*

13 *Eff. August 1, 2000;*

14 *Recodified from 09 NCAC 06B .1102 Eff. March 19, 2008;*

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

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25,*
17 *2015.*

1 09 NCAC 06B .1304 is amended as published in 29:24 NCR, with changes, as follows:

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3 **09 NCAC 06B .1304 GENERAL DELEGATIONS**

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

6 ~~(b)~~ (a) The State CIO may suspend, rescind, lower or raise this general delegation for a specific agency, up to the
7 benchmark established ~~under Rule 09 NCAC 06A .0103~~ by the Secretary of Administration upon consideration of the
8 agency's overall capabilities, including staff resources, organizational structure, training, purchasing compliance
9 reviews, electronic communication capabilities, and audit reports.

10 ~~(c)~~ (b) If an agency wishes to obtain an increase in its general delegation, to the IT benchmark set by the DOA
11 Secretary, it shall submit a request in writing, outlining its overall capabilities, to the State CIO for the State CIO's
12 consideration.

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14 *History Note:* Authority G.S. 147-33.76(b1); [~~143B-1302(e); 143B-1323;~~] 143B-1322(c); 143B-1350;

15 *Temporary Adoption Eff. January 1, 2000;*

16 *Eff. August 1, 2000;*

17 *Amended Eff. March 1, 2001;*

18 *Recodified from 09 NCAC 06B .1104 Eff. March 19, 2008;*

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

1 09 NCAC 06B .1402 is amended as published in 29:24 NCR as follows:

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3 **09 NCAC 06B .1402 PROCUREMENT FILE RECORDS**

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

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

- 8 (1) Requisition;
- 9 (2) Approval to proceed with acquisition;
- 10 (3) Each original executed offer if in writing, or written documentation of verbal offer received;
- 11 (4) Documentation supporting whether each offeror is responsive and responsible to terms of the
12 solicitation, the use of a competitive range selection and rejection of offerors for negotiations, best
13 and final offers (BAFO), award, or cancellation or other disposition of the solicitation as may be
14 applicable;
- 15 (5) Worksheets/evaluations of individual offers;
- 16 (6) Vendor distribution list or proof of fulfilling advertisement requirements, and any conditions and
17 approval for waiver to advertise, publish, and notify any part of a procurement action;
- 18 (7) Written justification for limitation or waiver of competition, or emergency purchase, or waiver of
19 any rule during the solicitation process;
- 20 (8) Tabulation of offers received;
- 21 (9) State CIO approval of award recommendation;
- 22 (10) Purchase order or other payment verification;
- 23 (11) Reason(s) for receiving only one offer in response to a solicitation;
- 24 (12) Summary of vendor debriefing, if any;
- 25 (13) Signed contracts or agency acceptance of offer(s); and
- 26 ~~(14) Board of Awards' decision records; and~~
- 27 ~~(15)~~ (14) Protest documents.

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

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31 *History Note: Authority G.S. 147-33.95(f); [143B-1323;] 143B-1350(e);*
32 *Temporary Adoption Eff. January 1, 2000;*
33 *Eff. August 1, 2000;*
34 *Recodified from 09 NCAC 06B .1202 Eff. March 19, 2008;*
35 *Amended Eff. March 1, 2016; September 1, 2013.*