

# Procurement Manual

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NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY

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# I. INTRODUCTION

## A. NC STATUTORY AUTHORITY, ADMINISTRATIVE CODE AND POLICY

This manual is intended to provide the basic laws, rules, policies and procedures that must be followed in carrying out the responsibilities of a Purchaser in the Department of Public Safety (DPS), Office of Recovery and Resiliency Section (NCORR). It applies to the acquisition of all equipment, materials, supplies, and services. NCORR will follow the procurement rules established by state statutory law (N.C. General Statute. Chapter 143, Article 3, 3C, 3D, 3G, 8) and regulatory law (01 N.C. Admin. Code Chapter 05 for non-IT procurements) and Article 3D, Chapter 147 Chapter 6 for IT procurements), as amended by any general or special delegations of contracting authority from the North Carolina Department of Administration, along with the Department of Public Safety, Division of Purchasing and Logistics purchasing manual.

The administration of this program has been delegated by the Secretary to DPS's Director of Purchasing and Logistics. The department's internal delegated authority is given here in this manual.

This manual is not all-encompassing of the laws, rules, and policies on procurement. In addition to this manual, both DIT and P&C provide on its websites additional resources needed by a Purchaser to insure compliance with all purchasing requirements in conducting their day to day purchasing activities.

All non-IT requirements must be purchased in accordance with [Article 3 and 3C of Chapter 143](#) of the General Statutes and the rules ([1 NCAC Chapter 5](#)) adopted by the Division of Purchase and Contract (P&C) of the Department of Administration.

All IT requirements must be purchased in accordance with [Article 3D of Chapter 147](#) of the General Statutes and the rules [09 NCAC 06A .0101](#) adopted by the Department of Information Technology (DIT)

If the Department contracts for the purchase or lease of any commodities or services contrary to statutes, or North Carolina Administrative Code (NCAC), such contract shall be void and of no effect. It is the responsibility of NCORR personnel involved in the procurement process to ensure that contracts are established in accordance with all applicable laws, rules, policies and procedures. NCORR personnel involved in the purchasing process will be held accountable for unauthorized purchases and improper purchasing practices.

Pursuant to 81 Fed. Reg. 83254, Sec. VI.A.1.a.(2) (Nov. 21, 2016), NCORR certifies that it will follow the State of North Carolina's rules and procedures for any procurement funded by the CDBG-DR grant.

## **Equivalence to 2 CFR §§ 200.318 through 200.326**

The Federal Register Notice governing this CDBG-DR grant requires that “the effect of the grantee’s procurement process/standards are equivalent to the effect of procurements under 2 CFR 200.318 through 200.326, meaning that the process/standards, while not identical, operate in a manner that provides for full and open competition.” HUD’s *P.L. 114-223 and 114-254 Certification Checklist* further explains that when conducting the equivalence analysis, HUD reviews the grantee’s procurement processes and standards, “taken as a whole,” to determine whether the effect for full and open competition is the same as that of 2 CFR part 200, subpart D.

### **B. COMPETITION**

NCORR’s purchasing program is built on the principle of fair and open competition. NCORR’s Purchasing Section is responsible for all aspects of purchasing commodities and services for the NCORR, either directly or indirectly, consistent with NCORR’s delegated authority and all applicable state laws, rules, and policies.

Competition is the cornerstone around which public contracting is built. In its best form, it is a mirror of a free and open economy. Where it is required, but not sought or obtained, the reason must be valid and must be documented. All NCORR purchasing personnel must maintain an awareness of the need for and value of competition.

Contracts will be procured in a manner that ensures full and open competition and avoids measures that restrict competition, including:

- 1) Unreasonable requirements
- 2) Unnecessary experience and bonding requirements
- 3) Noncompetitive pricing between companies
- 4) Noncompetitive awards to consultants on retainer
- 5) Organizational conflicts of interest
- 6) Specifying only brand name without permitting equal products
- 7) Arbitrary actions

### **C. INTEGRITY**

Fairness and impartiality in all phases of the procurement process by requestors and NCORR purchasing personnel is an essential ingredient in public procurement. Dealings with vendors and peers must be open, honest, and objective.

Integrity is a principal stock in trade for the public procurement professional. Integrity is manifested by fairness, openness, and impartiality and can be tarnished by even the slightest appearance of impropriety.

## **D. ETHICS**

It is imperative that all NCORR purchasing personnel be entirely cognizant of the necessity for ethical behavior. [North Carolina General Statute 14-234](#) states, in part “No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.” A violation of this statute is punishable as a Class 1 misdemeanor and the offending employee may be subject to disciplinary action.

[North Carolina General Statute 133-32](#) and [Executive Order 24](#) prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. A violation of this statute is punishable as a Class 1 misdemeanor and the offending employee may be subject to disciplinary action.

[North Carolina General Statute 14-234](#) prohibits all public officers and their spouses from receiving a direct financial benefit under a contract with which they are involved in making or administering. A violation of this statute is punishable as a Class 1 misdemeanor and the offending employee may be subject to disciplinary action.

[North Carolina General Statute 14-234.1](#) prohibits public officials and employees from using confidential (non-public) information for personal pecuniary gain or to assist another in securing a pecuniary gain. A violation of this statute is punishable as a Class 1 misdemeanor and the offending employee may be subject to disciplinary action.

Employees within the Department of Public Safety and NCORR shall strictly abide by these General Statutes and Executive Order.

## **E. OBJECTIVES**

This NCORR Purchasing Manual is to provide guidance and uniform procedures for the efficient and cost-effective purchase of goods and services for the Department of Public Safety, Office of Recovery and Resiliency. Additionally, this document is intended to:

- 1) Ensure reliable accountability and protection of funds and that an adequate audit trail of all transactions is maintained.
- 2) Promote the use of North Carolina companies and [Historically Underutilized Businesses \(HUB\)](#) when making procurements for the Department and promote opportunities for all citizens without regard to race, gender, or handicap.
- 3) Promote fair and open competition.

## **F. RESPONSIBILITY**

All NCORR Purchasers shall be responsible for handling each and every requirement in accordance with all laws, rules, policies, and this manual. In addition, each Purchaser shall:

- 1) Safeguard against conflicts of interest, or the appearance of a conflict of interest, and refrain from accepting gifts and favors from vendors or contractors doing business or seeking to do business with the State.
- 2) Monitor purchases to guard against splitting orders in an attempt to avoid competition requirements. This includes monthly and quarterly (scheduled buying) purchases.
- 3) Conduct him/herself in a professional manner at all times and maintain an effective businesslike relationship with DPS users, coworkers, vendors, and others that the Purchaser may have contact with in the course of carrying out his or her assigned duties.

## II. GLOSSARY

### A. DEFINITIONS

In addition to the definitions given by DIT and P&C, the following definitions are provided:

**AGENCY SPECIFIC TERM CONTRACT:** A Term Contract just for DPS.

**CONSULTANT CONTRACTS:** Work or task performed by State employees or independent contractors possessing specialized knowledge, experience, expertise and professional qualifications to investigate assigned problems or projects and to provide counsel, review, analysis or advice in formulating or implementing improvements in programs or services. This includes, but is not limited to, the organization, planning, directing, control, evaluation and operation of a program, agency, or department.

**CONSTRUCTION CONTRACTS:** A contract for construction, renovation, or repair of buildings, facilities, or other vertical or horizontal structures.

Every agency shall review the items being included in a construction/renovation project and remove from the scope of the construction procurement any items that they consider are non-related to the actual construction/renovation of the building. Items that are considered commodities, or just furnishings, to complete the project for use by the agency, shall be handled by P&C in accordance with the normal purchasing rules.

Items that are usually removed from construction/renovation projects include carpet, office panel systems, foodservice equipment, and furniture. If an agency determines that one of these items, or any item that is normally handled as a commodity purchase, is best suited for inclusion in the construction/renovation project, their justification shall be documented in writing for public record

**CONTRACTUAL SERVICE:** When an independent contractor performs services requiring specialized knowledge, experience, expertise or similar capabilities for the Department. The services may include (by way of illustration, not limitation) services such as, maintenance of buildings or equipment, auditing, film production, employee training and food service, provided that the service is not primarily for review, analysis or advice in formulating or implementing

improvements in programs or services (in which case rules relating to Consultant Contracts shall be applicable).

**DELEGATIONS:**

- **General Delegation:** The authority granted by P&C or DIT to the Department to handle purchases of \$25,000 or less.
- **Special Delegation:** The authority granted by P&C or DIT to the Department to handle a specific or special purchase, when the purchase price is over \$25,000. (Examples include, but not limited to, medical services, food, non-construction related repairs, etc.).

**DEPARTMENT:** Department of Public Safety.

**OPEN MARKET BIDS:** Generally, a one-time purchase of a commodity or service not covered by a term contract.

**PUBLIC FUNDS:** All public funds irrespective of source, whether special, federal, local, gifts, bequests, receipts, fees, or State appropriated, used for the purchase, rental, lease, installment purchase and lease/purchase of commodities, printing and services shall be handled under the provisions this manual. Exception to this requirement may be determined in the Grantor’s or Donor’s terms and conditions included in the grant or donation.

**REAL PROPERTY:** Any property that is attached directly to land, as well as the land itself. Real property not only includes buildings and other structures, but also rights and interests. Real property can be either rental or residential.

**RESPONSIBLE BIDDER:** An offeror who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability to assure good faith performance.

**RESPONSIVE BIDDER:** An offeror who has submitted an offer which conforms in all material respects to the solicitation document.

**STATEWIDE TERM CONTRACT:** A Term Contract for all agencies handled by P&C or DIT. If designated as a convenience type contract, it is not mandatory to use.

**TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity or service for a specified period of time based only on estimated quantities or needed services.

**B. ABBREVIATIONS AND INTERCHANGEABLE TERMS**

Department (Department of Public Safety)

DPS (Department of Public Safety)



DPS Purchasing (DPS Departmental Purchasing and Logistics)

HUB (Historically Underutilized Business)

IFB (Invitation for Bids)

IPS (Interactive Purchasing System)

DIT (Department of Information Technology)

NCORR (North Carolina Office of Recovery and Resiliency)

P&C (Purchase & Contract Division, Department of Administration)

OSC (Office of State Controller)

RFQ (Request for Quotes)

RFP (Request for Proposals)

Secretary (Secretary of the Department of Public Safety)

SPO (State Purchasing Officer)

### **III. DELEGATIONS**

#### **A. GENERAL DELEGATION**

The Department's general delegation from P&C and DIT for purchases of \$25,000 or less, that are not covered by Statewide Term contracts. The rules require advertisement, when using the competitive bidding procedure, for purchases of \$10,000 or more for non-IT procurement and \$25,000 or more for IT procurements.

#### **B. DOCUMENTATION FOR SPECIAL DELEGATION**

By special delegation, the SPO may authorize an agency to purchase specific commodities, printing, or contractual services without limitation as to the expenditure. Such delegation is normally confined, but not limited, to items and quantities, or services which by their nature or circumstance, such as perishability, transportation costs, local conditions or local availability, would serve no practical purpose to be handled by P&C. Any request for special delegation must be sent and handled through DPS Purchasing and Logistics office.

## IV. PURCHASING PRIORITIES

### A. CORRECTION ENTERPRISES

In accordance with [North Carolina General Statute 148-134](#) all departments, institutions and agencies of this State shall give preference to Department of Correction products.

Any item or service that is available from Correction Enterprises should be ordered from that agency or justification must be provided to DPS Purchasing and Logistics.

If Correction Enterprises cannot honor the order within the delivery time needed, then the requirement is to be handled following the purchasing procedures specified in this manual.

### B. TERM CONTRACTS

All items or services covered by a term contract, both Statewide and Agency Specific, must be ordered from the contractors listed for the specific term contract.

Exceptions to this requirement are: 1) a convenience type contract; 2) item is available from a DPS warehouse; or 3) item or service is available from Correction Enterprises. Statewide term contracts are handled by P&C or DIT, whichever is applicable. P&C and DIT also handle DPS Agency Specific Term Contracts that exceed DPS's general delegation. DPS Purchasing and Logistics office handles Agency Specific Term Contracts for DPS that are under its delegation.

### C. HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)

The Office for Historically Underutilized Businesses (located in the Department of Administration), generally known as the [HUB Office](#) is committed to advocating for minority, women and disabled-owned businesses in their efforts to conduct business with the State of North Carolina.

To qualify as a HUB, a business must be owned and controlled by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups: (1) Black, (2) Hispanic, (3) Asian American, (4) American Indian, (5) Female, (6) Disabled, (7) Disadvantaged.

HUB Office staff are available to assist firms with becoming certified as historically underutilized businesses. In addition, the HUB Office provides outreach, training and networking opportunities for new and established HUB firms.

The HUB Office website provides access to their programs and core services, HUB vendor/firm database, upcoming bids with various state agencies and public entities, HUB Annual Reports, HUBSCO Construction Reporting System, the latest news and calendar information for training and conference sessions.

Purchasers are to promote the use of Historically Underutilized Businesses (HUB), as well as North Carolina companies, when making procurements for NCORR under the advertising requirement.

To ensure broad solicitation of HUB vendors and contractors in NCORR procurements, all contracts costing \$10,000 or more shall be posted on the NC Historically Underutilized Businesses bid solicitation website. For all contracts in excess of \$10,000 where prime contractors will utilize subcontractors, prime contractors shall include in their bid proposals a statement verifying their efforts to solicit quotes from HUB subcontractors (This requirement achieves substantial equivalency with [2 C.F.R. § 200.321](#)).

#### **D. NONPROFIT WORK CENTERS FOR THE BLIND AND THE SEVERELY DISABLED**

NCORR Purchasing may purchase goods and services that are not IT related directly from a nonprofit work center for the blind and severely disabled as long as:

- 1) The purchase of goods does not exceed \$25,000 (no limit on services).
- 2) The goods or services are not available from Correction Enterprises.
- 3) The goods or services are not available under a term contract.
- 4) The goods or services are of suitable price and quality, as determined by DPS Purchasing.

Competition is not required when making a purchase from a nonprofit work center for the blind and severely disabled. Nonprofit work centers for the blind and severely disabled may still submit offers for contracts handled competitively.

## **V. PURCHASING COMPETITION THRESHOLDS**

### **A. OPEN MARKET PURCHASES**

#### **1) Small Purchases**

A small purchase is defined as the purchase of commodities or services not covered by a term contract, or not available from Correction Enterprises involving an expenditure of public funds of five thousand dollars (\$5,000) or less.

If competition is obtained verbally, the NCORR Purchaser must maintain a record of the companies from which offers were solicited, the company representative's name, and the price offered. If offers are received in writing, the offers must be included with procurement file. Beware of written offers that contain unacceptable conflicting terms and conditions.

#### **2) Purchases over \$5,000, but no greater than \$10,000**

The purchase of commodities or services involving an expenditure of public funds exceeding five thousand dollars (\$5,000), but no greater than ten thousand (\$10,000) via IFB, RFP, or RFQ by NCORR Purchasing Agents, unless it is:

- Covered by a term contract
- Available from Correction Enterprises
- Qualifies as a waiver

When requesting quotes, the NCORR Purchaser is encouraged to send solicitations to a minimum of three (3) or more vendors.

### **3) Purchases over \$10,000, but no greater than \$25,000**

For the purchase of non-IT commodities or services) involving an expenditure of public funds exceeding ten thousand dollars (\$10,000), the competitive bidding procedure must be used and the solicitation must be advertised on the State's Interactive Purchasing System (IPS), unless it is 1) covered by a term contract, 2) available from Correction Enterprises or 3) qualifies as a waiver.

Purchasers shall:

- Use the appropriate solicitation document template from the standard DPS Purchasing templates (for IT, use templates from DIT's web site) to insure the most up-to-date language is used.
- Develop and include open and fair specifications/scope of work, delivery requirements, quantities, and award criteria.
- Post solicitation to be advertised on IPS and the HUB Office bid solicitation website.
- Conduct an impartial evaluation of all offers received.
- Make an award of contract in the best interest of NCORR and one that can withstand a protest, and within three (3) working days from the award of the contract. This award notice shall identify the contract and award information.

### **4) Purchases over \$25,000**

For the purchase of commodities or services involving an expenditure of public funds exceeding twenty-five thousand dollars (\$25,000), the applicable competitive procurement procedure must be followed as outlined below and the request forwarded to P&C or DIT.

***(Note: The following does not necessarily apply to special delegations, exemptions, across-the-counter resale, waivers, or emergency and pressing need purchases.)***

a) Commodities:

- Prepare a solicitation document and send it to P&C or DIT, as applicable, and include all relevant information (specifications, scope of work, delivery requirements, quantities, award criteria, Federally Funded Certifications, etc.) with the requisition.
- P&C or DIT normally allows DPS Purchasing the opportunity to review the offers received by them and submit a recommendation for award back to their office for them to award the contract (differences in recommendations are usually worked out through negotiations between DIT or P&C and DPS).
- Unnecessary or duplicative purchases: When procuring goods, NCORR shall ensure that those good are necessary and not duplicative of existing resources. (This requirement achieves substantial equivalency with **2 C.F.R. § 200.318(d)**).
- Post the final solicitation on IPS and the HUB Office bid solicitation website for advertising.
- Lease versus purchase analysis: Where appropriate, when considering the purchase of goods, NCORR shall determine whether leasing in lieu of purchasing is the most economical approach. This requirement achieves substantial equivalency with **2 C.F.R. § 200.318(d)**.
- Procurement of Recovered Materials: NCORR, political subdivisions, and contractors shall comply with section 6002 of the Solid Waste Disposal Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247. For any condition where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; solid waste management services are procured in a manner that maximizes energy and resource recovery; and an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines is established. (This requirement achieves substantial equivalency with **2 C.F.R. § 200.322**).

b) Services:

- Prepare a Request for Proposals (RFP) or Invitation for Bid (IFB) using the appropriate DPS Purchasing templates (for IT, use templates from DIT's web site) to insure the most up-to-date language is used.
- Develop and include open and fair specifications/scope of work, delivery requirements, quantities, and award criteria. (At this point, if it is IT related, the requirement must be sent to DIT. They may handle the requirement or return it for handing by DPS Purchasing).

- Post the final solicitation on IPS and the HUB Office bid solicitation website for advertising.
- Conduct an impartial evaluation of all offers received.
- Send the offers received and the recommendation for award to P&C or DIT, as applicable, along with your evaluation and justification for your recommendation. DIT or P&C, whichever is applicable, has final decision as to which respondent will be awarded the contract, but DPS must officially award the contract. Differences in recommendations are usually worked out through negotiations between DIT or P&C and DPS.
- Make an award of contract in the best interest of the Department and one that can withstand a protest, and within three working days from the award of the contract. This award notice shall identify the contract and award information.

## **B. TERM CONTRACTS**

### 1) Agency Specific

- a) Agency specific term contracts for DPS Sections are to be handled in accordance with the above thresholds.
- b) The awarding agency must seek prior approval, when exercising an extension or renewal option in a contract, regardless of value, if it was awarded by either DIT or P&C.

### 2) Statewide Term Contracts

- a) All Statewide Term contracts are handled by DIT or P&C.
- b) E-Procurement purchase orders that will be placed against a statewide term contract that exceed the abnormal quantity amount identified for that contract must have prior approval from DIT or P&C.
- c) If it is a convenience type contract (not mandatory), the Purchaser is responsible for determining if it is more advantageous to buy from the convenience contract or seek competition (see Thresholds).

## **VI. WAIVER AND EMERGENCY PURCHASES**

### **A. WAIVER OF COMPETITION**

At times there will be a need to waive the competitive bidding procedure. In all cases where the value of the purchase is over \$10,000, prior approval by the Director of Purchasing and Logistics or designee is required. The situations in which a waiver is possible are listed below:

- 1) Where competition is not available
- 2) Where a needed product or service is available from only one source of supply
- 3) Where emergency action is indicated
- 4) Where competition has been solicited but no satisfactory offers received
- 5) Where standardization or compatibility is the overriding consideration
- 6) Where a donation predicates the source of supply
- 7) Where personal or particular professional services are required
- 8) Where a particular medical product or service, or prosthetic appliance is needed
- 9) Where a product or service is needed for a person with disabilities and there are overriding considerations for its use
- 10) Where additional products or services are needed to complete an ongoing job or task
- 11) Where products are bought for 'across-the-counter' resale
- 12) Where a particular product or service is desired for educational, training, experimental, developmental or research work
- 13) Where equipment is already installed, connected and in service, and it is determined advantageous to purchase it
- 14) Where items are subject to rapid price fluctuation or immediate acceptance
- 15) Where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies that thwarts normal competitive procedures
- 16) Where the amount of the purchase is too small to justify soliciting competition or where a purchase is being made and a price is available from a previous contract
- 17) Where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable Nonprofit organization(s)
- 18) Where a used item(s) is available on short notice and subject to prior sale

The NCORR Purchaser shall try to seek competition under the State's terms and conditions. This may be accomplished via RFP or IFB. If competition is not available or time does not permit solicitation, a justification shall be documented on the required approval form and forwarded for

approval by the Director of Purchasing and Logistics or designee. In cases where the vendor disagrees with the State's Terms and Conditions, it should be brought to the attention of the Director of Purchasing and Logistics for resolution.

**NOTE:** All request for waivers are forwarded to P&C or DIT for final approval when the purchase exceeds \$10,000.

## **B. EMERGENCIES AND PRESSING NEEDS**

There are times when an emergency or pressing need will arise. In non-declared emergencies where the value of the purchase is over \$5,000, prior approval by the Director of Purchasing and Logistics or designee is required. In declared emergencies, the Section or Unit may purchase equipment, materials, and supplies necessary to alleviate the immediate emergency.

For purchases during declared emergencies where prior approval was not obtained, the Section or Unit shall report those purchases to the Director of Purchasing and Logistics.

- **Emergency** is defined as a situation which endangers lives, property or the continuation of a vital program, which can be rectified only by immediate purchases or rental of equipment, supplies, materials or services. All emergency purchases over \$10,000 must be approved by the Director of Purchasing & Logistics. Emergency purchases are forwarded to State P&C after award as a matter of record.
- **Pressing Need** arises from unforeseen circumstances including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work which will likely result in an emergency situation if immediately not rectified. Pressing needs are to be approved by P&C or DIT prior to procurement. All pressing needs over \$25,000 must be approved by the Director of Purchasing & Logistics and forwarded to P&C for approval to award.

## **C. NCORR PROCESS FOR EMERGENCY OR PRESSING NEED**

- 1) NCORR must determine if the required purchase fits the criteria of an Emergency or Pressing Need:
  - Poor planning and/or scheduling does not constitute an emergency.
  - Abuse of emergency policies and procedures may result in disciplinary action and will be considered as "Unacceptable Personal Conduct" not requiring a previous written warning.
  - Emergency and Pressing Need purchases shall be made only in a quantity sufficient to alleviate the emergency.
  - Quantities of the same item in excess of the amount necessary to alleviate the emergency shall be ordered through the normal requisitioning process



- 2) Emergency procedures during business hours (Monday–Friday 7:00 a.m. to 5:00 p.m.):
  - The Section shall immediately contact DPS Purchasing and Logistics for assistance, prior to initiating a requisition.
  - DPS Purchasing will direct efforts at alleviating the emergency condition.
  - In most instances, NCORR will be asked to initiate a purchasing requisition.
- 3) Emergency procedures After Business Hours:
  - After normal business hours, NCORR shall pursue whatever course necessary to eliminate the Emergency or Pressing Need.
  - NCORR shall provide complete documentation of the circumstances surrounding the Emergency or Pressing Need.
  - A detailed list of purchases made to eliminate the Emergency or Pressing Need shall be documented.

## VII. EVALUATION

### A. BEST VALUE METHOD (Used for Services)

- 1) The following steps describe the process for application of the best value procurement methodology:
  - a) Appropriate best value bidding method is determined by purchasing authority.
  - b) An evaluation committee evaluates offers in accordance with the stated evaluation factors. For solicitations that include a best value ranking process, scoring and ranking may be determined by using any consistent rating methodology, including adjectival, numerical, or ordinal rankings. Relative strengths, deficiencies, weaknesses, and risks supporting the evaluation shall be documented in the contract file.

Evaluation factors may include but are not limited to quality factors; delivery and implementation schedule; maximum facilitation of data exchange and systems integration; warranties, guarantees, and return policies; vendor financial stability; consistency of the proposed solution with the state's strategic program direction; effectiveness of business solution and approach; industry and program experience; prior record of vendor performance; vendor expertise with similar projects; proven development methodologies and tools; and innovative use of technologies.

- c) Clarifications, communications to establish a competitive range, or negotiations may be conducted with bidders after receipt of offers in accordance with instructions and procedures set forth in the solicitation document and as appropriate to the method of

source selection chosen. In those cases where negotiation is permitted by procedures set forth in the solicitation document, bidders may be allowed to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer.

- d) The evaluation committee shall determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation document. All bidders shall be ranked from most advantageous to least advantageous to the state.
- e) Award must be made to the responsive and responsible bidder whose offer is determined in writing to be the most advantageous to the state, using all evaluation factors set forth in the solicitation. If the lowest price technically acceptable method is used, award must be made to the responding and responsible bidder with the lowest price.
- f) The following types of solicitations may be used:
  - 1. One-step Invitation for Bids (IFB) or Request for Proposals (RFP): Technical and price responses are submitted at the same time.
    - (a) If applicable, clarifications may be sought from the vendors.
    - (b) If the trade off or ranking method of source selection is used, communications to establish competitive ranges or negotiations may be used.
  - 2) Two step IFB or RFP: Technical responses (step one) and price responses (step two) to solicitation are submitted separately.
    - a) If the lowest priced technically acceptable method is used, technical responses (step one) are evaluated for acceptability only. Only clarifications with bidders are allowed. Price offers are opened (step two) for only those bidders who submitted technically acceptable responses. Selection is made by low price analysis.
    - b) If the trade off or ranking method of source selection is used, technical responses (step one) are submitted, after which clarifications, communications to establish a competitive range, and negotiations with bidders may be allowed as specified in the solicitation document.

Price responses (step two) are requested only from bidders placed in the competitive range after the technical evaluation and discussion phase has concluded. Subsequent negotiations may be conducted with bidders after receipt of price responses. Final price adjustments or best and final offers may be allowed.
  - 3) A trade off method of source selection may be utilized when it is in the best interest of the state to consider award to other than the lowest priced offer or other than the highest technically qualified offer. For a solicitation using a tradeoff source selection method, the following shall apply:

- a) All evaluation factors that will affect the contract award decision and their relative importance shall be clearly stated in the solicitation.
  - b) Price must be considered as an evaluation factor in the selection process. The solicitation shall state the importance or numerical weight of all evaluation factors including price.
  - c) Offers are ranked using the evaluation factors and their relative importance or weight as defined in the solicitation document. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors.
    - i. For example, an offer with the lowest price when compared to other offers would normally 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. If specified in the solicitation, communications and negotiations may be permitted after receipt of offer.
- 4) The lowest price technically acceptable source selection method may be used when best value is expected to result from selection of the technically acceptable offer with the lowest evaluated price. When using the lowest price technically acceptable method, the following shall apply:
- a) The evaluation factors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of those proposals that meet or exceed the acceptability requirements for non-price factors.
  - b) Tradeoff between price and non-price factors is not permitted.
  - c) Proposals are evaluated for acceptability but are not ranked using the non-price factors.
  - d) Only clarifications are permitted.
- 5) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the state and are approved for use by the SPO or the CIO or his designee.

## **B. PRICING**

NCORR shall ensure that profit is negotiated as a separate element of price for contracts awarded without competition and, to the extent permissible under state law, profit is negotiated for contracts costing \$250,000 or more where a cost analysis is performed prior to soliciting bids. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the

surrounding geographical area for similar work. (This requirement achieves substantial equivalency with [2 C.F.R. § 200.323\(b\)](#)).

## VIII. MISCELLANEOUS

### A. SUBRECIPIENT PROCUREMENT

All subrecipient spending and procurement actions under NCORR's Community Development Block Grant programs must comply with the federal procurement standards described in 2 CFR 200.317 through 200.326<sup>1</sup>. The federal procurement standards can be broken down into the categories below:

- General procurement standards (2 C.F.R. § 200.318)
- Competition (2 C.F.R. § 200.319)
- Methods of procurement to be followed (2 C.F.R. § 200.320)
- Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 C.F.R. § 200.321)
- Procurement of recovered materials (2 C.F.R. § 200.322)
- Contract cost and price (2 C.F.R. § 200.323)
- Federal awarding agency or pass-through entity review (2 C.F.R. § 200.324)
- Bonding requirements (2 C.F.R. § 200.325)
- Contract provisions (2 C.F.R. § 200.326)

Sub-recipients must follow their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal law and the standards defined in 2 CFR 200.317 through 326.

Following federal requirements does not exempt a subrecipient from state or local requirements. In some instances, state and/or local procurement requirements may be more stringent than the federal procurement regulations. Subrecipients must ensure any actions taken satisfy both federal and state/local requirements.

Non-compliance with the applicable procurement regulations can result in costs being deemed unallowable, reimbursement requests being denied, or an order that previously awarded grant funds be returned.

If an applicant does not have documented procurement procedures, NCORR may not provide a contract until the applicant documents is procurement procedures. If a subrecipient's procurement procedures are inadequate, NCORR may not provide a contract until appropriate revisions have been made to assure all procedures will be made in compliance with the applicable federal, state, local, and tribal procurement requirements and standards.

### B. MONITORING OF CONTRACTS

In compliance with GS 143-40 which reads any contract which results from the award of this Invitation for Bid shall include contract monitoring as a regular process of evaluating post award Vendor contract performance based on measurable deliverables and verifying Vendor compliance with the terms and conditions in the contracts, Purchasing and Logistics has established the

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<sup>1</sup> [2 CFR 200.317 through 200.326: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.](#)

Contract Monitoring Checklist which is to be completed by the end user upon request of the assigned Contract Administrator. The Purchaser is to submit the form to the end users to be completed and returned to the Administrator identified and placed in the bid file.

NCORR shall maintain oversight of its contractors and vendors to ensure performance in accordance with the terms, conditions, and specifications of the contracts. Performance measurement, reporting, and accountability requirements shall be incorporated into each contract. (This requirement achieves substantial equivalency with [2 C.F.R. § 200.318\(b\)](#)).

### **C. LEGAL REVIEW**

In order to ensure that contracts for supplies, materials, printing, equipment and contractual services are in proper legal form, contain all clauses required by law, are legally enforceable, and accomplish the intended purpose of the proposed contract, state law requires the Attorney General or designee to review all proposed contracts exceeding \$1,000,000 in cost. All solicitations between \$1,000,000 and \$5,000,000 shall be reviewed by a staff attorney prior to the posting of bid documents. For \$5,000,000 and above, the Attorney General's office shall review the solicitation document prior to the posting of bids.

### **D. FEDERAL CERTIFICATIONS**

For contracts valued over \$25,000 involving Federal Funds, one or more of the Federal Certifications may be required. These certifications are located in the Forms Section on the DPS Purchasing website.

Federal grants often contain specific requirements when procuring goods or services. To remain in compliance, Purchasing Agents should include all such requirements in the solicitation documents.

## E. FUNDING

### 1) Conditional Grants, etc., in Public Purchasing

Where a grant, donation, or special discount is predicated upon making a purchase from the grantor, the proposed transaction shall be explained in writing and shall have prior approval of the SPO. Prior to approval, the SPO shall consider the conditions placed on the grant, donation, or special discount, and how they will affect the agency and the State, the cost of agreeing to such conditions, and the market conditions. When a donation from a private source is predicated upon making the purchase or lease from a specific source, the purchase or lease may be made without prior approval of the SPO or Secretary. This only applies if the donation from the private source covers 100% of the purchase price.

#### a. Funds from Different Sources

All expenditures of public funds, irrespective of the source, whether special, federal, local, gifts, bequests, receipts, fees, etc., or State appropriated, used for the purchase, rental, lease, lease-purchase, and installment purchase of equipment, materials, supplies and services are to be handled under the provisions of Article 3 of Chapter 143 of the General Statutes and in accordance with this purchasing Manual.

NCORR shall ensure that a cost or price analysis is conducted for all contracts costing \$250,000 or more prior to soliciting bids.

## F. CONSTRUCTION

NCORR shall follow the guidelines for construction in accordance with G.S. 143-129 and 142-131 and the following:

To the extent applicable and where allowed under state law, NCORR will consider the use of value engineering for construction contracts. This requirement achieves substantial equivalency with [2 C.F.R. § 200.318\(g\)](#).

## G. TIME AND MATERIALS

Time and materials contracts shall only be awarded when no other contracting method is suitable (such as in immediate emergency or exigent circumstances). All time and materials contracts shall include a not-to-exceed ceiling price that the contractor exceeds at its own risk. This requirement achieves substantial equivalency with [2 C.F.R. § 200.318\(j\)](#).

## H. COST-PLUS

Cost-plus percentage of cost contracts are strictly prohibited.

## I. DEFAULT / DEBARRED VENDORS

No contract shall be awarded to a vendor or contractor who has been debarred from participating in state contracts by the Division of Purchasing & Contracting. No contract shall be awarded to a vendor or contractor listed on the federal Excluded Parties List System in the System for Award Management (SAM).

## IX. TOTAL PROCESS OVERVIEW

Procurement Task	Personnel/Unit Responsible	Person(s) & Contact Information
1. Draft scope of work and contract requirements.	Program Manager for the subject matter being procured	Chief Recovery Officer, 984-867-7015, for program specific procurements Chief Program Delivery Officer, 984-833-4388, for program delivery procurements Finance Chief, 984-833-5397, for business systems procurements
2. Insert legal provisions required by state and federal law	Procurement	Procurement Director, 919-324-6228
3. Review for state and federal compliance and for program goals/priorities	Legal	NCDPS Deputy General Counsel, 919-825-2668
4. Conduct cost/price analysis	Procurement	Procurement Director, 919-324-6228
5. Review for compliance with departmental procedures and rules, and format for posting	Procurement	Procurement Director, 919-324-6228
6. Review for state compliance (if the contract would exceed certain thresholds in state rules)	Procurement	Procurement Director, 919-324-6228

7. Post the procurement opportunity on the North Carolina state procurement website	Procurement	Procurement Director, 919-324-6228
8. Post the procurement opportunity on the NCORR's CDBG-DR website	Procurement	Procurement Director, 919-324-6228
9. Circulate the procurement opportunity to historically underutilized business (HUB) vendors	Procurement	Procurement Director, 919-324-6228
10. Conduct any Q&A session or pre-bid conference	Program Manager for the subject matter being procured	Chief Recovery Officer, 984-867-7015, for program specific procurements Chief Program Delivery Officer, 984-833-4388, for program delivery procurements Finance Chief, 984-833-5397, for business systems procurements
11. Receive vendor proposals	Procurement	Procurement Director, 919-324-6228
12. Evaluate vendor proposals, conduct cost reasonableness analysis, and recommend an award	Procurement	Procurement Director, 919-324-6228
13. Conduct any further negotiations with vendors, per state contracting rule	Procurement	Procurement Director, 919-324-6228
14. Review award recommendation	Procurement	Procurement Director, 919-324-6228

## **X. 2 C.F.R. § 200.326; 2 C.F.R. PT. 200, APP. II**

NCORR shall ensure that the following contract provisions are included in all contracts where applicable:

### **A. INCLUDE ALL APPLICABLE CONTRACT PROVISIONS**

- Remedies for breach of contract: Contract for more than the simplified acquisition threshold (currently \$250,000) shall address administrative, contractual, or legal remedies in instances



where contractor violate or breach contract terms, and provide for sanctions and penalties as appropriate.

- Termination for Cause and Convenience: All contracts in excess of \$10,000 shall address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.
- Equal Employment Opportunity: All contracts that meet the definition of a “federally assisted construction contracts” as defined by 41 C.F.R. § 60-1.3, except as otherwise provided under 41 C.F.R. pt. 60, shall include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed.Reg.12319, 12935, 3 C.F.R. Part,1964-1965Comp., p.339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor).
- Bacon-Davis Act wage requirements: All construction contracts costing in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction).
- Copeland “Anti-Kickback” Act (40 U.S.C. 3145): All construction contracts in excess of \$2000 shall include a provision requiring the contractor to comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145).
- Contract Work Hours and Safety Standards Act: All contracts in excess of \$100,000 involving the employment of mechanics or laborers shall include a provision for compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5).
- Clean Air Act and Federal Water Pollution Control Act: All contracts in excess of \$150,000 shall include a provision requiring contractors to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§1251-1387).
- Debarment and Suspension: All contracts and subcontracts shall include a provision prohibiting the award of a contract or subcontract to a vendor or contractor listed on the federal Excluded Parties List System in the System for Award Management (SAM) and requiring contractors to verify that the contractor, its principals, affiliates, or subcontractors are excluded or disqualified from participating in a contract paid for in part or whole with federal funds.
- Byrd Anti-Lobbying Amendment: All contracts in excess of \$100,000 shall include a provision requiring the contractor to certify compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended). All vendors competing for contracts subject to this requirement shall include a Certification Regarding Lobbying with their bid proposals or solicitation responses.

- Procurement of Recovered Materials: All contracts in excess of \$10,000 shall include a provision requiring the contractor to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

NCORR shall ensure that the following contract provisions are included in all contracts to the extent required under the terms and conditions of federal grant awards:

## **B. ADDITIONAL PROVISIONS OFTEN REQUIRED**

- Changes: All contracts shall include a provision specifying the method by which, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract.
- Access to Records: All contracts shall include a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing access to records, accounts, documents, information, facilities, and staff.

Compliance with Federal Law, Regulations, and Executive Orders: All contracts shall include a provision requiring the contractor to acknowledge that federal funds will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and agency policies, procedures, and directives.

- No Obligation by Federal Government: All contracts shall include a provision stating that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- Program Fraud and False or Fraudulent Statements or Related Acts: All contracts shall include a provision requiring the contractor to acknowledge that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.



