

North Carolina Office of Recovery and Resiliency (NCORR)

Procurement Manual

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Introduction

The North Carolina Office of Recovery and Resiliency (NCORR) Procurement Office is responsible for the procurement of information technology (IT) goods and services, and non-IT goods and services associated with the NCORR's mission.

Procurement in the state of North Carolina is governed by the North Carolina General Statutes (statutes), North Carolina Administrative Codes (rules), and various policies and procedures which govern the state's procurement practices. The Department of Information Technology (DIT), Statewide Information Technology Procurement Office (SITP) serves as the authority over the procurement of all IT goods and services. The Department of Administration (DOA), Division of Purchase and Contract (P&C) is the central procurement authority for non-IT goods and services. The Department of Administration (DOA), State Construction Office (SCO) serves as the authority for procurement of all state-owned building construction. Since construction procurements performed by NCORR are for residential homes; accordingly, State Construction Office rules are not applicable. See Appendix A, Department of Administration letter dated December 12, 2022.

Statutory Authority

The procurement authority of information technology (IT) goods and services in the state is governed by Chapter 143B, Article 15 of the North Carolina General Statutes. The procurement of non-IT goods and services in the state is governed by Chapter 143, Article 3 of the North Carolina General Statutes. State agencies, institutions, community colleges, and the universities of the UNC system must adhere to these statutes. Entities that do not fall under this authority include public schools, charter schools, and local and county governments, which fall under the authority of Chapter 143, Article 8.

An additional source of authority is the North Carolina Administrative Code. The procurement of information technology (IT) goods and services is governed by Title 09 Chapter 06 of the code. The procurement of non-IT goods and services is governed by Title 01 Chapter 05 of the code, with most provisions set forth in Subchapters 05A and 05B.

NCORR has received a special delegation which permits certain administrative flexibilities related to some procurement actions. This special delegation is described in Section 1.1.

HUD Certification of North Carolina Procurement Rules

The primary source of funds for NCORR are U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) and Mitigation (CDBG-MIT) funds. As a condition of receiving grant funds from HUD, NCORR has certified its procurement standards to HUD to follow the state of North Carolina Department of Information Technology, Statewide Information Technology Procurement Office (SITP) rules for the procurement of information technology (IT) goods and services; and the Department of Administration, Division of Purchase and Contract (P&C) rules for the procurement of non-IT goods and services. Accordingly, this manual is divided into Non-IT (Part 1) and IT (Part 2) to reflect the applicable rules unique to the respective procurement action.

The Federal Register Notices governing these 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 200.327, 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.

Contracting in Violation of the Law

Pursuant to G.S. 143-58, any contracts that are not procured in accordance with state procurement laws or rules shall be void and of no effect. In addition, the executive officer or the secretary of any agency shall be personally liable for the costs of any such contract. Therefore, it is the responsibility of all agency employees to ensure that all procurement is carried out in accordance with all applicable laws, policies, and procedures.

Integrity and Ethics

Integrity and ethics are central to public procurement. While laws and rules coalesce to provide a mechanism for public procurement, only people can ensure that integrity and ethics are the standard. In procurement, as in all fields, professionals must exhibit the values of pride and worth in their conduct and performance. Impediments to these values must be detected early, and safeguards provided at all levels. This applies to both state personnel and the vendor community.

Ethics are the moral principles that govern behavior and conduct. Strong ethical principles are required for public procurement because they prevent breach of the public trust by any attempt to realize personal gain through conduct inconsistent with discharge of duties.

Therefore, it is imperative that all state personnel be entirely cognizant of the necessity for ethical behavior. It takes only the slightest hint of impropriety to cast doubt on the procurement process. To that end, G.S. 14-234 (a)(3) states, "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."

G.S. 133-32 further prohibits 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.

NCORR takes pride in leading the efforts on integrity and ethics for procurement. These efforts are based on common ethical principles derived from professional codes of conduct provided by organizations such as the National Institute of Governmental Purchasing (NIGP), the Universal Public Procurement Certification Council (UPPCC), and the American Bar Association (ABA).

Common ethical principles that NCORR strives to perfect include:

- **Impartiality** – Equal treatment of all suppliers/customers and objective evaluation of each transaction and contract based on value and merit
- **Honesty** – Truth in all dealings with everyone, including contractors and the public
- **Loyalty** – Faithfulness to the entity, free of conflicts of interest

This procurement manual is based on the above concepts and best business practices. The intent of the manual is to support NCORR in the administration of their efficient and effective procurement office.

Part 1: Non-IT Procurement

1. Procurement Delegations and Thresholds

Delegations provide dollar thresholds that govern any agency's authority to procure goods and services. Agencies have the authority to purchase goods and services valued less than the agency's general delegation without involvement from the Division of Purchase and Contract (P&C). Any transaction that exceeds an entity's general delegation or benchmark must be reviewed and approved by P&C unless it is otherwise exempted. There are normally two types of delegations: general and special. The differences between these and the conditions under which they are delegated are explained elsewhere in the manual.

NCORR end users/business owners shall not divide requirements into more than one procurement in order to keep individual purchases under the competitive threshold amount, and thereby avoid certain rules and processes (See 01 NCAC 05B .0315). This includes monthly and quarterly (scheduled buying) purchases which may be established on a repetitive basis. The cumulative contract value, including the original contract period and any renewals, must be used to determine whether a procurement is subject to competition.

1.1. Special Delegation

Special delegations apply to categories of goods and services that are specifically exempted by the State Purchasing Officer (SPO) from P&C oversight. By special delegation, the SPO may authorize an agency to independently purchase specific commodities, printing, or contractual services without limitation as to the expenditure. By contrast, general delegations, discussed above, are dollar thresholds under which agencies may procure all of their own goods and services without P&C review.

For goods and services governed by a special delegation, purchasing agencies are authorized to make their own purchases, regardless of dollar amount, but competition shall be sought where available. This is normally confined to procurements for which P&C involvement serves no purpose or adds no value. Such circumstances include perishability, transportation costs, local conditions, or local availability.

Special delegations shall be in writing and retained as a matter of record (see 01 NCAC 05B.1603). Unless otherwise specified by the SPO, special delegations are subject to the following conditions and limitations:

- All goods and services covered by Statewide Term Contracts (STCs) must be purchased in accordance with the instructions of each contract.
- Competition must be solicited, where available. If competition is not available, the reason(s) must be documented in the procurement file.
- Agencies are required to issue their own solicitation documents. The solicitation document shall include one of the solicitation templates provided by P&C, including the state's standard terms and conditions and any other consistent contract language issued by the SPO, unless prior approval from the SPO is granted to substitute modified language.
- All transactions shall be documented.
- Awarding of contracts pursuant to a special delegation shall be the responsibility of the agency's executive officer (agency head).

- Any controversial matter arising from a special delegation must be brought to the attention of the SPO.
- All bid protests are handled by the Agency (NCORR).
- All contracts expected to exceed \$1 million shall comply with the requirements of G.S. 143-50.1.
- P&C shall periodically review all approved special delegations to ascertain the continued suitability for delegation.

NCORR has an unlimited Special Delegation from P&C which authorizes NCORR's Procurement Office to perform autonomously without P&C oversight. The special delegation is critical to NCORR's procurement processes and the ways in which the special delegation impact procurement actions are documented throughout this manual. See Appendix B, NCORR Special Delegation.

1.2. General Requirements

All procurements include similar general requirements. These requirements are outlined below.

- Contract Value. A contract's value shall be determined cumulatively. The value of the original contract period, along with any renewal options, extensions, and amendments shall be included in determining the contract's value.
- Contract Term. The contract term, or length, is generally no longer than three years, including all extensions and renewals. NCORR must include a written justification from the NCORR business owner to demonstrate that a longer period would be advantageous to the state.
- Identification of Need. NCORR's respective program section shall be responsible for identifying their respective program needs and notifying the NCORR Procurement Office in sufficient time to perform the procurement in accordance with all North Carolina procurements rules. Together, the procurement office and business owners have a fiduciary responsibility to procure goods and services using good judgment, as well as proceeding in accordance with all statutes, rules, policies, and procedures that govern public procurement practices. The business owner shall submit a request to the procurement office in writing (either a requisition via the NC eProcurement System or via e-mail) requesting procurement perform a function and provide details regarding the requested action. For common procurement items, such as construction, alternative processes may be established to streamline the procurement outcome.

1.3. Scope of Work and Specifications

The primary purpose of a scope of work or purchase specification is to provide a basis for obtaining goods or services that will satisfy a particular need at an economical cost. Scopes of work or purchase specifications define the needs and specifications of a particular procurement and determine the appropriate procurement method.

North Carolina's procurement program is built on the principles of competition and transparency. For each procurement, NCORR should:

- Seek competitive offers from qualified and responsible supply sources, unless exempted by statute or rule or an alternative process is defined herein related to that specific procurement (for example, for informal purchases and in some instances, construction scopes of work).

- Develop specifications that are designed to reasonably satisfy NCORR’s needs but are not unduly restrictive and will maximize competition.
 - Specifications are the physical or functional characteristics of the goods or services offered by the vendor. Specifications should not be confused with requirements, which prescribe the process or procedure that a vendor must comply with to be deemed responsive and further considered for award. See Section 4.5 Specifications.
- Encourage competition in the open market, resulting in the best possible contract for the needed goods or services.

1.3.1. Information Gathering

A Request for Information (RFI) is a document used to gather information from potential suppliers of a good or service. RFIs are used primarily as a planning and information gathering tool. RFIs are also used to identify industry standards, best practices, potential performance measures, and cost or price structures, or to generally ascertain the level of interest of prospective respondents.

NCORR is not required to use this method to gather information in developing future solicitations but may find vendor responses useful in that regard. When using RFI responses to develop solicitations, NCORR should take care to avoid developing specifications that favor the vendors that responded to the RFI. While vendor-supplied information may be used to develop a solicitation, the solicitation document should not be directly based on any of the vendor’s specifications, marketing data, or RFI response text so that no advantage is provided to any particular vendor. For example, do not cut-and-paste information from a vendor’s RFI response into the solicitation.

An RFI should:

- Provide as much information as practical to define the type of information that is being sought.
- Indicate it is not a solicitation, request for offer, or an offer; and that responding shall not result in a contract award.
- Does not include the North Carolina General Terms and Conditions because no contract formation is intended.
- Should include the following sections:
 - An overview of the desired good or service to be provided.
 - Information requested from the vendor.
 - Expectations related to the response to the RFI.

1.3.2. Contract Types

Procurements and contract types differ based on the item to be procured. Common contract types are defined below.

1.3.2.1. Goods

Goods means all non-IT related goods, including equipment, materials, or supplies requested for purchase. 01 NCAC 05A.0112(16) defines goods to mean “any tangible property, including all equipment, materials, supplies and commodities.” A goods contract is further defined as “any agreement involving the Procurement of Goods from a Vendor, but which may also have ancillary Services aspects.”

If it appears that the acquisition of used equipment, materials, or supplies is in the public interest, competitive procedures shall be followed wherever feasible. Used goods may be sourced when they are available on short notice, are needed for the disabled, or where waivers of competition, emergency, or pressing needs may be justified. See 01 NCAC 05B.0602. The solicitation document may or may not include a request for prices on like new products, but in either case acquisition may be made on the basis of whichever is considered most advantageous for the intended purpose. Confirmation should be made that the price of the used equipment is reasonable with respect to its age and condition.

1.3.2.2. *General Service*

Service contracts are those contracts awarded for providing specified tasks or duties, including repair work or programs, undertaken by a vendor to fulfill requirements and specifications of a contract. A service contract may also include incidental goods such as new parts or reports.

A service contract is defined in 01 NCAC 05A.0112(36) as any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, expertise, or similar capabilities in the Vendor. Includes contracts for Consultant Services and Personal Services and may also involve the ancillary purchase of Goods.

Contracts and amended contracts for the provision of certain personal services (as defined in the statute) shall be subject to the same review and approval requirements for other services contracts. GS 143-48.6.

The services may include, but are not limited to, maintenance of buildings or equipment, auditing, film production, employee training, and food service, provided 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.

Examples of certain service contracts include:

- Rental Contract. A contract for the right to use a good or product for a period of time, usually with payments made at intervals over the usage period, and normally providing short notice for cancelation. Contracts for the rental of goods shall be handled pursuant to the same rules applying to the outright purchase of goods. Rental agreements shall not include an option or obligation to purchase the good. (See Lease Purchase Contract).
- Lease Purchase Contract. Used when the decision for outright ownership is uncertain or when delays of ownership are intended. Options or obligations to purchase before or at the end of the contract term shall be provided. Third party financing is not used. Ownership transfers only if goods are purchased. Contracts may include an option to upgrade goods during lease periods without rebidding the contract. Outright purchases shall employ the same rules as lease purchase contracts.
- Installment Purchase Contract. Term used only when ownership of a commodity at time of possession is intended. Third party financing is used in most cases. It creates a security interest in the property purchased to secure payment of the purchase price to the seller or to an individual or entity advancing money or supplying financing for the purchase transaction. If the commodity is on a term contract and third-party financing is being utilized, then the commodity is to be purchased from that contract. If the commodity is on a term contract but third-party financing is not being utilized, the commodity would not be considered on the contract since some form of

financing would be necessary. When third party financing is involved and the commodity is not on a term contract, the contract for the commodity is handled first and must include a provision that award of the contract is contingent upon obtaining satisfactory financing. The financing contract should also include an option for early payment without penalty.

1.3.2.3. Professional Services

Professional Services are defined in 01 NCAC 05A.0112(25) as contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications, who provides ongoing Services. A Professional Services Contract is a type of Service Contract.

These services may include, but are not limited to, the ongoing services performed by a doctor, attorney, engineer, nurse, architect, scientist and production or program service providers performing a distinct service deliverable, provided that the service is not primarily for review, analysis or advice in formulating or implementing improvements in programs or services, in which case the rules relating to consultant contracts shall be applicable.

One type of professional service is a consultant service contract. Consultants provide analysis or advice in formulating or implementing improvements in programs or services. These contracts require Governor's Office approval as set forth in 01 NCAC 05D.

NCORR business owner requesting consultant services shall provide to the procurement office a letter of endorsement by the Department of Public Safety (DPS) secretary and a written justification. See 01 NCAC 05D.0203. At a minimum, this justification shall contain:

1. What services are desired to secure.
2. Why the work to be performed by the consultant cannot be reasonably accomplished by employees of DPS.
3. How the work to be performed relates to the proper functions of NCORR.
4. What benefits NCORR expects to receive from the consultant's services.
5. What NCORR estimates to be the cost of the services sought.
6. What potential sources of consultant services, if any, NCORR has identified.
7. A letter of endorsement for the proposed contract from the DPS head or designee.

If NCORR is requesting to contract for consulting services outside of state government, it shall also detail what potential sources of those services exist within state government and explain why the desired services are not available from those sources. 01 NCAC 05D.0203. The Governor's Office shall approve outside consultants prior to contract solicitation and again prior to contract award.

The documents submitted by the business owner requesting authority to retain consultants will first be reviewed by the NCORR Procurement Office and then the Governor's Office. 01 NCAC 05D .0204. Upon completion of this review, subject to such conditions as may be prescribed by the governor or designee, to:

1. Canvas additional sources within state government.
2. Solicit proposals from a private contractor.

3. Sign negotiated contracts without competitive proposals if the Governor's Office have determined any of the following:
 - Performance or price competition is not available.
 - The service is required for an authorized cooperative project conducted with governmental units, or public or private nonprofit organizations.
 - The contract price is too small to justify soliciting competitive proposals.
4. Abandon the project for being outside the scope of NCORR responsibilities or for having no financial benefit to the state relative to the potential expenditure of funds.

If NCORR receives Governor Office approval to solicit proposals for consultant services, the proper procurement will be conducted based on the scope and anticipated cost of the service to be provided. Once an award recommendation is made in accordance with the ordinary procurement process, the award recommendation and supporting documentation are provided to the Governor's Office for review. The Governor's Office shall then notify NCORR if a contract may be made with one or more approved service providers or if all proposals have been rejected. See 01 NCAC 05D.0205.

After receiving authorization from the Governor's Office to enter negotiated contracts for consultant services without soliciting competitive proposals the procurement office shall issue the solicitation to the authorized vendor.

Upon vendor contract execution, the procurement office shall submit the contract to the Governor's Office. The Governor's Office will review the contract and shall advise DPS/NCORR in writing that the approved contract(s) may be executed by the agency head.

2. Procurement Methods

Three procurement methods are in use by NCORR:

- Small purchase
- Informal
- Formal

The appropriate procurement method is determined by the dollar value of the procurement and whether the purchase is covered by a Statewide Term Contract, available from Correction Enterprises, statutory exemption, special delegation, or other exemption. The categories provide dollar thresholds that govern NCORR procurement authority and the methods required to procure goods and services.

These procurement methods are similar, but not identical to, the procurement methods described in 2 CFR § 200.320 "Methods of procurement to be followed." The naming conventions and general description may differ from the federal counterpart.

An open market solicitation is the fair and open solicitation of offers for the purchase of a good or service, not otherwise covered by a term contract. Rule 01 NCAC 05B.0301 sets out the requirements for formal and informal solicitations. Small Purchases do not need to conform for open market solicitation requirements, although NCORR may elect to perform an open market solicitation on a small purchase item if such a procurement were found to be most advantageous for NCORR business needs.

2.1. Small Purchase

Small purchases are those that are valued at \$25,000 or less, including the amount of any extensions or renewals. Competitive quotes or bids are not required for small purchases. Small purchases are addressed in 01 NCAC 05B.0301 and are subject to the following rules:

- Statewide Term Contracts (STC) shall be used for small purchases if applicable and mandatory. STCs that are deemed for use as “convenience” may be used for any purchase, including small purchases. All goods and services covered by STCs shall be purchased in accordance with the instructions in those contracts.
- NCORR may post small purchase solicitations on P&C’s electronic bid system and may use solicitation templates provided by P&C. However, this system is not required for small purchases.
- NCORR business owners should monitor small purchases to protect against system abuse and to ensure that the value received by the agency is commensurate with the amount spent.

Generally, Small Purchases are similar to the “Micro-Purchase” method described at 2 CFR § 200.320(a)(1). Small Purchases may be awarded without soliciting competitive price or rate quotes if the price is found to be reasonable based on the business owner’s research, experience, past purchase history for similar items, or other information to support the reasonableness of the cost.

NCORR encourages and promotes the use of HUB vendors.

2.1.1. Procurement Cards

Procurement cards (P-Cards) may be used for some small purchases provided the amount does not exceed the threshold for transaction authorization limits (see below). P-cards are for official use only and shall be used in accordance with the guidelines established in the Statewide Term Contracts. All other procurement rules and policies also apply to P-Card purchases. NCORR use of P-Cards is contingent upon satisfactory compliance reviews, as determined by the Department of Public Safety and P&C.

The Division of Purchase and Contract authorizes a \$25,000 single transaction limit; however, NCORR is subject to the Department of Public Safety P-Card transaction limits. Reference the DPS P-Card Manual. Questions regarding the DPS P-Card Manual should be addressed to the DPS P-Card Administrator. DPS may set lower limits for all purchases or specific types of purchases than authorized by P&C. Purchases can be limited by amount per transaction, total per period, number of purchases per period, Merchant Category Codes (MCC), and in many other ways. Each card can have specific controls unique to that cardholder’s responsibilities. Exceptions to this limit are described in 01 NCAC 05B.1523.

2.2. Informal Purchase

Informal purchases are those that are valued between the small purchase benchmark of \$25,000 and an alternative threshold established by NCORR’s special delegation which expands the limit up to the Federal Simplified Acquisition Threshold (\$250,000). This alternative threshold is effective February 14, 2023 through December 31, 2024. For procurement actions not indicated in the special delegation, the Department of Public Safety general delegation for informal purchases of \$50,000 prevails. Informal purchases are addressed in 01 NCAC 05B.0301 and are subject to the following rules:

- STCs shall be used for informal purchases if applicable and “mandatory.” STCs that are deemed for use as “convenience” may be used for any purchase, including informal purchases. All goods and services covered by STCs shall be purchased in accordance with the instructions in those contracts.
- NCORR must use the most recent P&C template version as the official template, unless a change to the official template is approved by either NCORR legal or the Contract Management Section of P&C.
- Informal purchases must contain the state’s standard terms and conditions unless alternative terms and conditions are documented and approved by NCORR general counsel.
- Price or rate quotes shall be solicited from at least three qualified sources. If three qualified sources are unavailable, an approved waiver of competition may be considered. See Section 3.1 Waiver of Competition.

NCORR encourages and promotes the use of HUB vendors.

Informal Purchases are similar, but not identical to, the “Small Purchase” method described at 2 CFR § 200.320(a)(2).

2.2.1. Competition in Informal Purchases

The special delegation authorizes NCORR to waive competition for construction solicitations that are less than the federal Simplified Acquisition Threshold (\$250,000). To comply with requirements for the use of federal funds, NCORR generally does not waive competition for procurement actions taken with CDBG-DR or CDBG-MIT funds. However, 2 CFR § 200.320(e) “Noncompetitive Procurements” allows for non-competition in specific instances which are similar to the conditions allowable in 01 NCAC 05B.1401.

2.3. Formal Purchase

Formal purchases are those that are valued above NCORR’s special delegation limit of the federal Simplified Acquisition Threshold (\$250,000), including the amount of any renewals or extensions. This alternative threshold is effective February 14, 2023 through December 31, 2024. For procurement actions not indicated in the special delegation, the Department of Public Safety general delegation for formal purchases for amounts greater than \$50,000 prevails. Formal purchases are addressed in 01 NCAC 05B.0301 and are subject to the following rules:

- STCs shall be used for formal purchases, if applicable and “mandatory.” STCs that are deemed for use as “convenience” may be used for any purchase, including formal purchases. All goods and services covered by STCs shall be purchased in accordance with the instructions in those contracts.
- NCORR advertises solicitations to vendors:
 - **NC eProcurement System, Ariba Sourcing Module** – Post formal purchase solicitations on the NC eProcurement Sourcing system using an Invitation for Bid (IFB) or Request for Proposal (RFP). NCORR is encouraged to use eProcurement but is exempted from the requirement to do so.
 - **Interactive Purchasing System (IPS)** – Post formal solicitations in the IPS using an IFB or RFP.
 - **Request for Quote (RFQ)** – Issue an RFQ document directly to one or more vendors.

Formal purchases include Invitation for Bids (IFB), Request for Proposals (RFPs), and Request for Qualifications (RFQx). NCORR encourages and promotes the use of HUB vendors.

Elements of the special delegation also apply to formal purchases:

- NCORR must use the most recent P&C template version as the official template, unless a change to the official template is approved by either NCORR legal or the Contract Management Section of P&C.
- All procurements must be competitively bid unless competition has been waived pursuant to the specific conditions listed in 01 NCAC 05B.1401.

Pursuant to G.S. 143-50.1, all proposed solicitations for “supplies, materials, printing, equipment and contractual services” with an estimated value exceeding \$1 million must be reviewed by the Contract Management Section of P&C prior to posting and prior to award. The authority to perform this review has been granted to NCORR legal counsel per NCORR’s Special Delegation. NCORR legal counsel should be included in the solicitation preparation process as early as possible.

When sealed bids are required, offers may not be sent by email, fax, or telephone. Sealed offers are required for the procurement of goods and services that exceed the general or special delegation, whichever one is applicable to the procurement action. When advertisement is required, NCORR shall advertise the solicitation for a minimum of ten calendar days prior to the designated bid opening date. See 01 NCAC 05B.0316. This rule does not prevent the supplemental solicitation of offers by other means, including direct mailings, phone calls, or agency advertisement, to encourage competition.

Addenda should be issued when it is necessary to make changes to the solicitation that will be applicable to all bidders, such as extending the bid opening or modifying bid submission requirements. Addenda shall also be prepared as necessary to respond to questions received from potential vendors during the question-and-answer period. The details about the question-and-answer period should be provided in the solicitation document. There are two types of addenda that can be issued:

- Mandatory. Mandatory addenda must be signed and returned with the vendor’s bid submission in order for the vendor to be considered responsive and further eligible for award.
- Non-mandatory. Non-mandatory addenda do not need to be returned by the vendor and do not affect vendor responsiveness.

The addenda shall indicate whether it is mandatory and must be executed and submitted with the vendor’s response to the solicitation. Any addenda issued shall be posted using the same procedures as the original solicitation posting.

2.4. Procurement of Construction

The selection of a construction contractor is the most common procurement action taken by NCORR. The NCORR special delegation allows for the informal purchase process for the purpose of quickly and efficiently selecting construction contractors at a scale that is necessary to complete the volume of construction work required to complete NCORR’s mission. Construction scopes of work commonly procured include single-family residential property rehabilitation, demolition, structural elevation, Manufactured Home (MHU) replacement, and environmental remediation.

NCORR shall make a determination of the appropriate procurement method depending on the scope of the project and other facts and circumstances related to project needs.

For procurement purposes, NCORR defines “project” as a single contract for a single construction site. Some construction sites will require multiple contracts for different scopes of work that are generally performed by vendors with different specialties. For example, an environmental remediation firm may be awarded a contract for hazardous materials removal, a second contractor may be awarded demolition, and a third contractor may be awarded rehabilitation or elevation. Each of these contracts would be considered a “project” even though the work is being performed at the same address. Separate contracts for the same or several work sites may be awarded and is not considered splitting pursuant to 01 NCAC 05B.0315. Several different projects may be awarded to the same vendor on the same day as each project has a unique scope of work and period of performance.

2.4.1. General Contractor Scorecard

To facilitate timely selection of a contractor while maintaining competition, NCORR has developed a General Contractor Scorecard (the Scorecard) as a metric for identifying contractors which meet the definition of responsible. The Scorecard is managed by NCORR’s Program Delivery Office (PDO) and the evaluation criteria used in the Scorecard may be adjusted from time to time to more accurately represent changes in the market. The Scorecard is used to assess contractor performance and is a key element of the assignment of construction work.

2.4.2. Formal Bidding of Construction Projects

NCORR may elect to formally bid construction projects. When doing so, the IFB will be posted to IPS for a minimum of 10 days. Each individual project will be awarded in the best interest of the state.

2.4.3. Informal Bidding of Construction Projects

NCORR may elect to informally bid construction projects. When doing so, the Request for Bids (RFB) will be sent via email to the prequalified list of general contractors. Each individual project will be awarded in the best interest of the state. NCORR’s special delegation permits the informal bidding of construction contracts up to the federal Simplified Acquisition Threshold (\$250,000).

2.4.4. Assignment of Construction Work

At times, there may be a need to proceed with awarding a contract without the use of the ordinary solicitation policy defined above. This process is known as assignment. The assignment process relies on the general contractor scorecard to identify a qualified, responsible contractor to perform the work. The conditions to waive competition (not including the broad waiver of competition allowable for construction contracts below \$250,000 provided to NCORR in its special delegation) are found at 01 NCAC 05B.1401. Some common examples of when a contract may be assigned include, but are not limited to:

- There was no responsive, responsible bidder on the contract using the ordinary bidding process.
- A vendor previously found to be responsive and responsible did not execute the requirements of the contract in a timely or satisfactory manner.

3.6.1. References

NCORR may require that vendors responding to a solicitation provide a list of past customers for which they provided similar goods or services as those sought in the solicitation. NCORR may contact these references to determine bid acceptability and may consider this information in the evaluation. The solicitation document should indicate whether references will be considered in the evaluation.

3.6.2. Insurance

Providing and maintaining adequate insurance coverage is a material obligation of the vendor under the contract. Vendors shall be responsible for providing and maintaining commercial insurance, of the type and amount listed below. The default insurance coverage requirements vary based on contract value, as reflected below and in the North Carolina General Terms and Conditions.

The required coverage amounts listed below are minimums, which may be increased where there is a high risk of loss based on the subject matter of the contract. Any modification of the required insurance coverage should be based on a risk assessment and documented in the official procurement file. A risk assessment template is available from P&C for this purpose. The increased amounts should be provided in the solicitation document, so vendors are aware of the requirements. The insurance coverages provided for in the North Carolina General Terms and Conditions are not exhaustive, and other types of coverage may be needed for a specific procurement, such as cyber insurance or E&O coverage. The solicitation document should include any additional types of coverage required.

NCORR may request proof of insurance coverage from the vendor prior to contract award.

- Small Purchases:
 - Worker's Compensation Employer's Liability – As required by North Carolina law.
 - Commercial General Liability – As required by North Carolina law.
 - Automobile Liability – As required for risks involved in the procurement.
- Contracts greater than small purchases but less than \$1 million:
 - Worker's Compensation Employer's Liability – \$250,000
 - Commercial General Liability – \$500,000
 - Automobile Liability –
 - Bodily Injury and Property Damage - \$250,000
 - Un/Underinsured - \$250,000
 - Medical Payment - \$2,500
- Contracts greater than \$1 million:
 - Worker's Compensation Employer's Liability – \$500,000
 - Commercial General Liability – \$1,000,000
 - Automobile Liability –
 - Bodily Injury and Property Damage - \$500,000
 - Un/Underinsured - \$500,000
 - Medical Payment - \$5,000

3.6.3. Use of Purchasing Power for Private Purposes

The purchasing power of the state or its agencies shall not be used for private advantage or gain. Purchases under contracts made by the state or the agency shall not be allowed for personal use or ownership by an employee or other individuals. G.S. 143-58.1(a). Violation of this provision is a Class 1 misdemeanor. See G.S. 143-58.1(b). However, there are two exceptions provided by G.S. 143-58.1(b):

1. The agency through which the goods or services are procured has established policies and procedures permitting such purchases in order to provide for the mutual benefit of such persons and the agency, or for the public benefit or convenience.
2. Such policies and procedures, including any reimbursement policies, are complied with by the person permitted to use the purchasing or procurement procedures.

3.6.4. Auctions and Reverse Auctions

Auctions are a means by which an entity can purchase items offered for sale to the highest bidder. If buying an item that is not covered by an STC, NCORR's executive officer may authorize purchase through auction. Auction purchases must otherwise follow procurement rules and processes.

Reverse Auctions are authorized by G.S. 143-49.1. Pre-qualified vendors are allowed to submit consecutive bids that lower the purchase price and costs of a given procurement until no further such reduction occurs. If using this approach should refer to the established STC for appropriate procedures in the solicitation document to help clarify how the procurement will be conducted.

3.6.5. Cooperative Purchasing

Where NCORR is a participant in an approved cooperative project with another governmental entity or with a non-profit organization, that contract may be established pursuant to a waiver of competition. See 01 NCAC 05B.1513.

Pursuant to 01 NCAC 05B.1513 the goods and services necessary for the cooperative project should be procured through normal processes unless NCORR executive officer permits one of the following alternative acquisition methods:

- By making the acquisition on behalf of such governmental activity or charitable non-profit organization.
- By authorizing acquisition on the state's behalf under the provisions of G.S. 143.8.
- By authorizing acquisition on the state's behalf under the provisions of another state or another governmental entity, provided due consideration is given by the NCORR executive officer to the differences in purchasing rules, regulations, and procedures of the contracting entity.

Cooperative purchases with a governmental entity or a non-profit organization should still follow procurement rules, including use of solicitation documents, inclusion of standard terms and conditions, and any additional processes dictated by the amount of a procurement expenditure.

3.7. Purchasing Preferences

There are several purchasing preferences that must be considered prior to issuing a solicitation. These include, in order:

1. Purchase from Correction Enterprises.
2. Purchase from Nonprofit Work centers for the Blind and Severely Disabled.
3. Purchase from an existing Statewide Term Contract.
4. Solicit Competitive Offers.

3.7.1. Correction Enterprises

The Department of Public Safety Correction Enterprises has a preference statute that controls the sale of prison industry products and prohibits their sale to the private sector. See G.S. 148-134. Pursuant to this statute, all agencies shall give preference to products made by Correction Enterprises, which are manufactured or produced within the state prison system and offered for sale to state entities by the Department of Public Safety. This preference is provided for all procurement dollar thresholds.

Products available from the private sector, that are also offered by Correction Enterprises, shall be purchased from the private sector only when it is determined that the Correction Enterprises product will not satisfy the standard specifications or the reasonable requirements of the entity or the goods will not be available when needed. The procurement file should contain documentation from Correction Enterprises stating that the item(s) cannot be supplied. Competitive bidding shall not apply to goods available from Correction Enterprises.

3.7.2. Nonprofit Work Centers for the Blind and Severely Disabled

Session law 2021-180, Section 20.12 (a) through (c) amended G.S. 143-129.5 to require that P&C annually canvass nonprofit work centers for the blind and severely disabled to determine what goods and services they offer and to secure contracts to make those goods and services available to the state entities that require them. G.S.143-48.2 was also amended to require that state entities purchase from those contracts so long as:

1. The purchase of goods does not exceed the agency's general delegation.
2. The goods or services are not available from an STC.
3. The goods are not available from Correction Enterprises.
4. The goods or services must be of suitable price and quality, as determined by the agency.

Where needed goods or services are not available from Correction Enterprises, NCORR must determine whether those items can be supplied pursuant to the STC established with the nonprofit work centers for the blind and severely disabled.

3.7.3. Statewide Term Contracts

When available and advantageous, NCORR must first consider a Statewide Term Contract before approaching the open market. A "term contract" is a contract where a vendor agrees to provide goods and services at set prices, for an agreed contract term, and pursuant to specific terms and conditions. No

set quantity is provided, but estimates are often given based on forecasted usage. It is also referred to as a “requirements contract” or “indefinite quantity contract.”

Non-IT Statewide Term Contracts (STCs), [Statewide Term Contracts | NC DOA](#), are established by P&C for state agency use and in certain situations for use by other entities, such as municipalities. STCs are competitively bid by P&C.

During the process of establishing STCs, P&C considers several factors. These factors are found at 01 NCAC 05B.1102 and include:

1. Which items are most used or purchased by the state.
2. Whether lower prices can be obtained through volume discounts.
3. Whether transportation costs are included in the pricing.
4. Whether warranties may be included in the contract.
5. The availability of online catalogs within NC eProcurement for order processing efficiency.

The pricing and terms for each STC are available on the P&C website. All goods and services covered by an STC must be purchased from the STC, unless a valid justification is provided by the business owner to procurement in writing. The purchase shall be in accordance with the respective STC instructions. For example, some STCs may specify a minimum or maximum quantity or dollar value for each order. Read each contract carefully prior to ordering. Orders valued less than any minimum quantity indicated on the contract synopsis shall be obtained in accordance with normal agency procurement procedures. Orders that exceed any maximum quantity shall be handled in accordance with the respective STC.

If a waiver, emergency purchase, or pressing need arises, STC suppliers should be given the opportunity to satisfy the requirement, if the needed goods or services are covered by an STC and if time permits such action.

There are two types of STCs: Mandatory and Convenience. 01 NCAC 05B.1101 and G.S. 143-49 state that Mandatory STCs shall be used by state agencies, departments, institutions, universities, and community colleges, unless exempted by statute or rule. Convenience STCs *may* be used by state agencies, departments, institutions, universities, community colleges, and other entities, including schools and local governments, as provided in the contract. See G.S. 143-49.6.

When NCORR’s STC requirements exceed the dollar amount maximum set forth in an STC, the request shall be forwarded to P&C for approval. P&C, in its sole discretion, may handle the request in one of the following ways:

1. The purchase may be authorized at the current level of pricing with the current STC vendor(s).
2. Additional discounts from the current level of pricing may be negotiated with the current contract vendor.
3. A separate solicitation may be issued for the procurement.

The NCORR procurement office has the discretion to establish Agency Specific Term Contracts. An agency specific term contract is a “requirements contract” or “indefinite quantity contract” established for use by a specific agency (NCORR) when the needed goods or services are not otherwise covered by an STC.

4. Procurement Requirements and Specifications

4.1. Written Solicitation

The solicitation documents are mechanisms through which NCORR seek vendors to provide needed goods and services. The solicitation document provides the basic information of who, what, when, where, why, and how, which should be conveyed in a clear, concise, and logical sequence. The solicitation document must provide information about the procurement process, the goods and services being procured, and contract performance expectations if the vendor is selected for award.

P&C solicitation document templates provide this framework and are required for use in all informal and formal procurements. A copy of the posted solicitation document and each bid received is required in the official procurement file. See 01 NCAC 05B.1903.

4.1.1. Terms and Conditions

P&C maintains and provides the North Carolina General Terms and Conditions for use in state contracts. These terms are written broadly in order to provide legal protection in a variety of procurements.

The special delegation permits NCORR to modify terms and conditions. Modifications to terms and conditions shall be approved by NCORR legal counsel.

4.1.2. Federal Terms and Conditions

NCORR shall ensure that the provisions of 2 CFR § 200.327 and Appendix II to 2 CFR 200 are included in applicable contracts associated with federal funds.

Additionally, depending on the item to be procured, there may be other federal requirements. These federal requirements include but are not limited to HUD Section 3 requirements and Davis-Bacon and Related Acts (DBRA) requirements.

4.2. Pre-Bid and Pre-Proposal Conferences or Site Visits

When necessary, NCORR should hold conferences or site visits with potential vendors as the first process of the timeline of the solicitation. While these conferences provide opportunities to emphasize and clarify complex or critical solicitation requirements, eliminate ambiguities or misunderstandings, and permit vendor input, NCORR should consider whether attendance is required for a vendor to understand the solicitation and submit responses.

Conferences or site visits should be conducted with potential vendors when issuing solicitations for complex or critical requirements. Attendance at conferences or site visits may be either mandatory or urged and cautioned (optional). Any conference or site visit requirements should be included in the solicitation document. At the conference or site visit, an attendance sheet should be documented.

If the pre-bid/pre-proposal conference is held in-person:

- The agency representative shall sign the attendance roster.
- Only attendees who have arrived on time shall sign the attendance roster.

- Attendees shall indicate on the sign-in sheet all of the parties they represent.
- For mandatory site visits, only vendors who are represented on the attendance roster and who attend for the required duration of the site visit will be deemed to have met the attendance requirement.
- Late-comers may attend but shall not sign the attendance roster.
 - Note that this is most relevant to mandatory conferences.

If the pre-bid/pre-proposal conference is held virtually (e.g. Microsoft Teams), the NCORR procurement officer or designee shall document attendance. As an example, vendors may be asked to put their information in the chat function, which can then be exported and saved to the official procurement file.

4.3. Response Time

Certain procurements require sealed offers, which are defined as offers that remain unopened until the public opening time stated in the Solicitation. 01 NCAC 05A.0112. Sealed offers are required for formal solicitations, but informal solicitations may also require sealed offers at NCORR's choosing.

When sealed offers are required, the solicitation document will state the deadline for vendor responses to be received. The bid opening dates should provide vendors with ample time to respond. Sealed bid opening dates shall be no less than 10 calendar days from the date the solicitation is posted. NCAC 05B.0316(a). Complex requirements may require longer preparation times and should provide sufficient time for vendors to prepare a response.

4.4. Acceptance Period

In order to allow the state time to conduct the bid evaluation and any negotiations, vendors should agree to hold their bid open for a certain period of time. During this time the vendor must honor the terms of its bid submission, including pricing, if the state selects the vendor for contract award.

Bids should be valid for a minimum of 60 calendar days unless otherwise noted in the solicitation documents or the vendor's bid response. The acceptance period should be adjusted based on the subject matter of the procurement and whether negotiation is anticipated. Complex negotiations with sophisticated vendors can take weeks or months to complete.

4.5. Specifications

"Specification" means any description of the physical or functional characteristics of, or the nature of, the goods or services to be procured. 01 NCAC 05A.0112. Specifications can either enhance or inhibit competition depending on how they are written. Goods and services specifications must be written to meet NCORR needs while maximizing competition and should not be overly restrictive or descriptive in favor of a particular Vendor's product.

Several specification categories are listed herein in the preferred order of use.

4.5.1. Performance and Design Specifications

Business owners should develop requirements with a view towards soliciting the requirement on a generic specification basis. Generic specifications may be *performance specifications*, which set forth the performance requirements or *design specifications*, which set forth the essential characteristics of the items solicited.

4.5.1.1. Brand Specifications

When it is impractical to develop a generic specification, a brand name may be used to convey the intended style, type, character, and quality of the article desired. Unless otherwise provided in the solicitation document, the name of a certain brand, make, or manufacturer does not restrict bidders to the specific brand or manufacturer named.

Any offering which NCORR, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The solicitation should inform vendors, however, that the vendor must identify the equivalent product it intends to supply in its response.

A brand specific specification restricts the acceptable products to those of one or more specified manufacturers. Brand specific rationale can be used only when the requirement can be met by the exact specifications offered by a particular item made by the manufacturer.

Written justification by the business owner for a brand specific specification must be approved in advance by NCORR's executive officer. The business owners brand specific justification and the NCORR's executive officers' approval should be documented in the official procurement file.

Brand specific specifications may be appropriate in situations such as:

- When the desired product must be compatible with or is an integral component of the existing equipment or products, or where prequalification of products is necessary to support specific needs of a program.
- When a product is covered by a patent or copyright or when the product must yield absolute continuity of results.
- When the product is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training.

Upon solicitation, every effort must be made to obtain full competition among the resellers which carry a manufacturer's product. Protests may occur if written solicitations are ambiguous or inconsistent. Business owners should use caution when developing specifications in order to minimize the possibility of a bid protest.

4.6. Transportation and Freight

The state shall require Free on Board (F.O.B.) Destination as the transportation/freight shipment method in the solicitation, unless in rare cases circumstances require an alternate method.

F.O.B. is a shipment term used to indicate whether the seller or the buyer is liable for goods that are damaged or destroyed during shipping. F.O.B. Destination means the seller retains the risk of loss until the goods reach the buyer. Including anything other than F.O.B. Destination in a contract could result in NCORR being responsible for the goods lost during shipping and having to pay for the goods even if they are never received. If the goods are destroyed in transit, NCORR may also have to pay for replacement goods and could, in effect, end up paying twice.

When goods are shipped, purchase order numbers must be shown on packages and shipping manifests to ensure proper identification and payment of invoices. Shipments shall include complete packing lists. Ensure that these requirements are in the solicitation document and any resulting contract, so the vendor is aware of the requirements.

Suppliers shall not ship products until they have received an official purchase order and/or contract. The business owner should review charges and compare them against award documents to determine if shipping costs are accurate and may be approved for payment.

- F.O.B. Destination. It is the policy of the state to solicit bids for goods F.O.B. Destination, which means that the seller owns and assumes all risk for the goods until they are accepted at the designated delivery point. The cost of shipping the goods should be included in the quoted price or by the bidder or offeror as a separate line item, but the invoice amount cannot be more than the total bid price.
- F.O.B. Origin. Means that the state takes ownership at the seller's location and would be responsible for filing claims if the goods are damaged during shipment. Before approving an invoice for payment, NCORR should review it and compare it to the award document to determine if the shipping costs are accurate. If a charge on the invoice is not accounted for in the bid, it cannot be approved for payment.

4.7. Product Samples

Requirements for product samples shall be clearly indicated in the solicitation document. Vendors shall furnish samples of items offered upon request, at no cost to NCORR (including shipping). Samples that are not destroyed shall be returned upon written request at the vendor's expense. Samples not returned to the vendor shall become property of the state. Samples shall be managed as follows:

1. Samples should be labeled with:
 - a. Purchaser's name.
 - b. Commodity.
 - c. Solicitation number.
 - d. Term contract number or quote number.
 - e. The projected disposal date for the samples.
2. Where testing is required, the person in possession of the test samples should return them as soon as possible after testing has been completed or dispose of them in accordance with the instructions provided in this section.
3. Sample items for term contracts shall be held for 90 calendar days following expiration of the contract.

4. The prompt return of samples to the vendor shall be the responsibility of the purchaser or engineer, if the vendor requests their return.
5. Samples released to the using agency by the vendor or unclaimed after 90 calendar days from completion of delivery shall be either put into use within the using Agency, transferred to another state agency, recycled, sold through State Surplus Property Agency, or discarded as trash.
6. The disposition of samples shall be documented in the official procurement file.

4.8. Vendor Presentations and Product Demonstrations

If specified in the solicitation document, evaluators may request oral presentations or discussions with vendors to clarify the materials or services presented in the vendor's response. Presentations shall not be used to materially alter or expand the scope of the solicitation, and evaluators are not required to request clarification from vendors but may do so at their option. Failure to perform requested demonstrations may be grounds for disqualifying the response from further consideration.

The state may require vendors or their authorized representatives to demonstrate the exact offered models to ensure products are suitable for their intended use before contracts are awarded. Demonstrations shall be performed upon request at NCORR's facility free of charge to the state. Demonstration results shall be documented in the file and be considered in the evaluation.

All requests for vendor presentations/product demonstrations pursuant to a solicitation shall be requested by the evaluation committee to the NCORR procurement office.

5. Contract Price

There are several types of contract pricing structures available to procurements depending on the nature of a solicitation. The most common are described below.

5.1. Fixed Price

A fixed price contract is where firm unit or total prices are established upon contract award for goods or services. A fixed price contract may result from bidding or negotiation processes. They are used when specifications are clear, and costs are predictable. There is minimal risk to NCORR when firm fixed price contracting is used because the financial requirements are known. This type of contract encourages efficient performance and is the least costly to administer. The use of firm fixed price contracting may be inappropriate if requirements or specifications are unclear or indefinite.

A fixed price agreement with escalation or de-escalation provides for price adjustments up or down if specified contingencies occur. This type of contracting may result from bidding or negotiation processes. It is used to minimize fluctuations in vendor's prices due to unstable markets. The contract period is typically over a long period of time. The use of fixed price contracts with escalation or de-escalation reduces the need for contractors to inflate the cost of goods to offset unstable markets or economic conditions. The risk of cost increases or decreases is partially transferred to NCORR. Administrative costs may be increased as a result of the greater contract administration efforts that are required for this type of contract. Normally, any upward price adjustment should be justified and approved by NCORR prior to its effectiveness.

5.2. Term Contracts

Term contracts, also called “requirements contracts,” are agreements for performance over a specified period of time, when quantities are indefinite. They have no fixed total dollar amount; rather, they are unit price based. They establish a framework under which goods and services are provided, but it is the degree of purchase order activity against the contract that will ultimately determine the contract’s total value. These contracts are typically established as State Term Contracts (STC) or agency specific term contracts.

Effective administration of these open-ended agreements requires that the agency maintain some record of purchasing activity against these contracts. Purchasing and the business owner must have a means to capture, analyze, and report usage information, to allow for monitoring volume and discount opportunities. Purchase order activity must be periodically reviewed for compliance with the terms of the agreement. Contract expenditure activity should always be examined prior to the exercise of any renewal provision or re-solicitation.

5.3. Time and Materials

Time and materials (T&M) agreements for goods or services are based on billable hours, which include overhead, profit, and materials. The details of the work are known, but the extent of the work may be unknown. T&M contracts are suitable for maintenance, design, engineering, and emergencies, among others. Competition is sought on the basis of labor-hour rate.

These contracts may be expensive to administer. If NCORR uses a cost- reimbursement agreement such as T&M to acquire needed goods or services, it is essential that the cost structure builds in deliverable milestones and retainage percentages to allow for accountability in performance. Billed costs should be analyzed (and challenged when appropriate) prior to their approval for payment.

When a T&M agreement is used, NCORR must request a detailed job estimate which should include the amount and type of contract labor with associated rates and itemized material costs to allow evaluation of the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiation or the solicitation of additional estimates may be considered, if permitted by the solicitation.

Contracts in which payment is calculated as cost-plus-a-percentage-of-cost are prohibited. See G.S. 143-52(c).

5.4. Blanket Purchase Orders

Blanket purchase agreements (BPAs) are contractual relationships to obtain small dollar value expendable operating supplies or services for which low or erratic demand usage exists. A set of terms and conditions are agreed upon between the buyer and seller wherein the seller will deliver, or permit pick up of, supplies ordered by the individual who has received authorization from the purchasing office. The prevailing market price, less any trade or volume discounts, as may be agreed upon, is charged and invoiced on a consolidated (usually monthly) basis.

The principal advantage of a BPA is the ability to delegate ordering authority to the user level, resulting in quicker access to the goods or services. Consolidated invoices are processed, which reduces the paper flow and administration. The success of this arrangement is dependent upon the establishment and enforcement of proper controls to monitor contract usage.

5.5. Cost Plus Percentage of Cost Contracts

Cost plus percentage of cost contracts are defined as contracts under which the vendor receives payment for indeterminate costs plus a stated percentage or amount of profit based upon such costs. This pricing structure may not be used for any purpose, except as provided in G.S. 18C-150. See also G.S.143-52(c). These contracts are also typically not encouraged in accordance with federal cost principles.

5.6. Commodity Codes

The state utilizes the United Nations Standard Products and Services Code (UNSPSC). The IPS six-digit commodity codes are derived from UNSPSC's eight-digit system. The IPS six-digit code is the first six digits of the UNSPSC eight-digit code. Standardized commodity codes are used to:

- Provide a standardized method of sourcing.
- Identify the procurement as goods or services.
- Provide electronic notification of bidding opportunities.
- Identify term contract items.
- Provide detailed history of commodity purchases.
- Increase savings and efficiency for the state.
- Analyze spending data.

Correct commodity code usage will promote accuracy in reporting and provides P&C with the vital statistics needed to determine contract usage and vendor participation.

NCORR may search for commodity codes by accessing the P&C website or the UNSPSC website. The NC eProcurement website Public Vendor Search allows North Carolina eProcurement registered vendors to be searched by commodity code.

5.7. Payment Terms

Invoices shall be paid on time as agreed, typically no later than 30 calendar days after receipt of a correct invoice or acceptance of goods and services, whichever is later.

NCORR and DPS are responsible for all payments to the contracted vendor. Solicitation payment terms shall comply with policies established by the Office of State Controller and DPS Finance.

6. Procurement Responses

The following items must be complete after all responses have been received.

6.1. Bid Opening (Formal Bids)

For formal purchases, bids and proposals shall be opened publicly at the location (virtual), date, and time listed in the solicitation document. Only those responses that are received by the deadline shall be opened and may be further considered for award.

At the time of bid opening, bidder names, manufacturer information, model numbers of offered items, delivery timeframes, and pricing that is not subject to negotiation or two-step opening shall be announced to vendors and other persons attending the opening. This includes all timely bids received, including those that may later be deemed non-responsive.

Late bids are not opened. If negotiation is anticipated, pricing may not be made public until award. See 01 NCAC 05B.0503.

Where sealed bidding is required, the following process should be followed:

1. Bids shall be received prior to the bid opening date and time specified in the solicitation. Late bids shall not be opened or considered.
2. At least two purchasing agency employees shall attend the bid opening to satisfy the witness requirement. 01 NCAC 05B.0305(a).
3. Bid openings shall occur at the location (virtual), date, and time specified in the solicitation.
4. All vendors in attendance shall sign the attendance sheet, indicating which party or parties they represent.
 - a. If a bid opening is held virtually, use a screenshot or other method to capture a list of attendees.
5. Ensure vendors understand that they shall not contact anyone other than the listed contact on the solicitation during the evaluation period.
6. Explain to attendees the evaluation process and that the only information that will be shared publicly at this time is:
 - a. Bidder names
 - b. Manufacturer/Make
 - c. Model number
 - d. Delivery timeframe
 - e. Pricing (unless negotiation is anticipated)
7. NCORR shall not comment about addenda received or not received unless the pricing, make, model, or delivery has been changed through an addendum.
8. Ensure vendors know how to access bid tabulations in the Interactive Purchasing System (IPS).
9. A tabulation of vendors responding to the solicitation shall be prepared.
10. Tabulations should be posted in the IPS as soon as practical. Do not post pricing until after award if negotiating.

Bid openings may be conducted as either a one-step or two-step process. The process required depends on the type of solicitation document used and the method of evaluation. The evaluation criteria and bid opening method must be included in the solicitation document.

- One-Step (IFBs or RFPs). The vendor submits one sealed package. At the date and time specified in the solicitation, bids from each responding vendor will be opened publicly, and the name of the vendor and costs offered will be announced. If negotiation is anticipated, pricing may not be made public until award. See 01 NCAC 05B.0503.
- Two-Step (RFPs). The vendor submits two sealed packages containing (1) the technical proposal and (2) the cost proposal. At the date and time specified in the solicitation, technical proposals from each responding vendor will be publicly opened and the name of each vendor announced publicly. A notation will also be made indicating whether a separate sealed cost proposal has been received. Cost proposals will be placed in safekeeping until publicly opened at a later date. Vendors shall be given at least two working days advanced notice of the date and time for the public opening of cost proposals.

Bidders are solely responsible for having their offer delivered at the correct date, time, and location, regardless of delivery method. Late offers or modifications shall not be accepted unless the agency personnel involved in the solicitation are directly responsible for the delay.

6.2. Withdrawn, Void, or Recalled Offers

A “withdrawn bid” is a bid that is rescinded by the vendor prior to the bid opening. See 01 NCAC 05A.0112(46). Vendors, or their authorized agents, may withdraw offers in writing. Withdrawn offers should remain unopened in the bid file along with the withdrawal letter. Solicitations issued via the eProcurement Sourcing Tool vendors can withdraw and resubmit offers until the bid opening date and time.

A “voided bid” is an electronic bid that was submitted by a vendor in connection with an electronic solicitation that has been cancelled, leaving the bids voided and not opened electronically. See 01 NCAC 05A.0112(44).

A “recalled bid” is a bid that is rescinded by the vendor after the bid opening but prior to a contract being awarded. Recalls should be requested in writing after bids are opened.

When a vendor seeks to recall its bid, purchasers shall review the reasons given for any recall request to ensure that allowing the recall would not compromise the procurement process.

Any withdrawal request made after the opening of bids, and award of contract, shall be allowed only for good cause shown and in the sole discretion of NCORR.

6.3. Bid Tabulation

Once the bid opening has occurred NCORR procurement must create a tabulation of the publicly available information and post it in the IPS. Tabulations are normally available in the IPS within one working day after opening. See 01 NCAC 05B.0305. However, lengthy tabulations may not be available in IPS. Requests

for tabulations or tabulation information (such as pricing) that is not publicly available cannot be honored until after award.

6.4. Legal Review

To ensure that contracts are legally sound and to protect the state from unnecessary risk, all NCORR solicitations, addenda, and amendment are reviewed by NCORR legal counsel. State law provides for legal review under certain circumstances; this review has been granted to NCORR legal counsel by the State Purchasing Officer pursuant to NCORR's Special Delegation. Per North Carolina law, legal review is required for:

- Contracts exceeding \$1 million.
 - All contracts that cumulatively are expected to exceed \$1 million shall be reviewed by NCORR legal counsel pursuant to NCORR's Special Delegation. Pursuant to G.S. 114-8.3(c), all state entities and universities are required to report to P&C when they intend to enter into a contract expected to exceed \$1 million for record keeping purposes, regardless of whether they are exempt from CMS or P&C review. P&C has authorized NCORR to submit information in Excel format directly to CMS. Contracts that are processed through P&C's electronic bid system do not have to be separately reported.
- Non-competed contracts exceeding \$5 million.
 - Proposed non-competed contracts for goods or services estimated to exceed \$5 million shall be reviewed by the Attorney General (AG) or their designee prior to contract award. The AG's checklist and certification shall be completed before final contract approval. See G.S. 143-49(3a).

NCORR legal counsel should be included in the solicitation as early as possible.

The State Purchasing Officer interprets contract value to include all potential extensions and renewals. Thus, the value of the contract is the cumulative total amount.

7. Evaluation Criteria

The evaluation method and criteria are critical to the procurement process. They should be tailored to each specific procurement and be included in the solicitation document. The evaluation method and criteria dictate how vendor responses to a solicitation will be evaluated and a vendor selected for award. When developing the evaluation sections of a solicitation, consider how the responses will be assessed in a fair and consistent manner and ensure that the resulting contract will be in the best interest of the state.

Only offers deemed responsive after the completed administrative review can be considered for evaluation and award. Prior to award, it is essential to ensure that both the offer and the vendor are eligible for award. This involves assessment of whether the offer is responsive, and not debarred (federal and state), prior to award. After vendor selection, in certain circumstances, negotiation may be needed to secure better pricing or finalize the terms and conditions of the contract.

Evaluation criteria for award may be based on the lowest cost technically acceptable methodology or the Best Value Trade-Off method. Other factors to be considered must be identified in the solicitation document.

7.1. Administrative Review

7.1.1. Responsive

Before the evaluation can proceed, each offer received must be reviewed to determine whether it is responsive before it can be further considered for award. See 01 NCAC 05A.0112(28). A “responsive” offer is an offer that meets all the requirements of bid submission, such as bid execution, submittal of all required information and completed attachments, and receipt by the bid submission deadline.

Bids with material deficiencies are non-responsive and cannot be considered for award. For example, failure to submit pricing or a technical approach is a material deficiency, since the response cannot be properly evaluated. Submission of a response with material deficiencies cannot be cured by clarification. See 01 NCAC 05A.0112(6), 05B.0307, and 05B.0309(c). An issue with a response that does not create a material issue, such as a vendor providing two copies of its bid instead of three, can be waived as a minor informality or technicality. In certain instances where all responsive vendors have made the same material mistake, that requirement may be waived for all vendors.

Examples of omissions that would result in a vendor being deemed non-responsive:

- Failure to provide required references.
- Failure to sign the bid or proposal.
- Failure to complete all required attachments.
- Failure to return all mandatory addenda.
- Failure to submit pricing.
- Failure to attend a mandatory site visit or conference.
- Failure to meet delivery requirements.
- Late bid submission.

Non-responsive vendors may not be evaluated or considered for award, so responsiveness must be determined prior to evaluation.

All received bids must be signed (executed) by the vendor to be accepted for consideration. A signature indicating that the document is the vendor’s offer is necessary to create a binding contract.

In certain instances, a vendor will include a signed cover letter that reflects that the vendor intends to be bound by the terms of the solicitation document. Depending on the specific language of the cover page, the signed cover page may be able to replace the signed solicitation execution page. Specific cover letter language is required for this substitution. Consult NCORR legal counsel to determine whether a signed cover page can stand in lieu of the signed solicitation document.

7.1.2. Responsible

In addition to submitting a responsive offer, a vendor must be responsible to be eligible for award. A "responsible" vendor is one who is able to satisfactorily perform the work. A contract may not be awarded to a vendor if that vendor is not responsible.

A vendor is determined to be responsible by reviewing the information they provided in response to the solicitation to see if they have the capacity to perform the technical and contractual requirements of the contract. For example, the certification of financial condition or other financial documents may demonstrate a vendor's responsibility.

Determining a responsible vendor will differ depending on the good or service procured. For construction procurements, NCORR's Program Delivery Office (PDO) ensures vendors are responsible through the General Contractor Scorecard, capacity assessments, and other tools.

7.1.3. Debarred Vendors

Debarred vendors are not entitled to enter into contracts with the state. See 01 NCAC 05B.1520. It is critical to check whether a potential vendor is listed on the state's debarred vendor list before they are selected for award. If a solicitation is funded by federal grants, consulting the federal debarred vendor list is also required.

7.2. Evaluation Method

Responsive vendors shall be evaluated to determine and document which offer is the most advantageous to the state based on the evaluation method and criteria in the solicitation document. The evaluation criteria define the selection process and how offers will be evaluated and awarded. When appropriate, they also provide for value analysis in selecting the most advantageous proposal by considering other factors besides price, such as performance history, experience, technical approach, and other related factors. Contracts are awarded based on what is most advantageous to the state.

Evaluations may be based on either cost, numerical weighting, or narrative trade-off. Whichever approach is used, the evaluation must be thoroughly documented and included in the official procurement file. All responsive offers shall be considered for award.

All evaluation factors and criteria and their relative importance must be stated clearly in the solicitation document. Unless the solicitation provides otherwise, the relative importance is determined by the order in which the factors are listed. Specific percentages for the weight of each factor are not required, but if used, must be disclosed in the solicitation document. Relative strengths, deficiencies, weaknesses, and risks supporting the evaluation must be documented for each vendor and saved in the procurement file. The evaluation team shall determine the final ranking of all offers under consideration using only the criteria set forth in the solicitation document. All vendors are ranked from most advantageous to least advantageous to the state. Only criteria listed in the solicitation shall be considered in the evaluation and cannot change during the evaluation phase.

Selection of appropriate evaluation criteria is a critical component of the solicitation document. It defines the selection process and guides how offers will be evaluated and awarded. It also provides for value analysis in selecting the most advantageous proposal by considering other factors besides price, such as past performance history, qualifications, experience, and technical approach used in the proposal.

Common evaluation criteria include:

- Cost (when allowable based on the procurement method).
- Delivery and implementation schedules.
- Conformity with the specifications.
- Vendor experience.
- Technical approach.
- Staffing plan.

If financial information will be evaluated, the solicitation document must state the requirement and inform the vendor of what documentation must be submitted. The vendor's financial information, statements, and/or documents submitted with its response shall be evaluated to determine whether the vendor:

- Has sufficient ability to perform the contract.
- Can meet its short-term obligations, debts, liabilities, payroll, and expenses.
- Has provided complete, reliable, and accurate financial information regarding its business operation.
- Is financially solvent.
- Has sufficient cash flow and/or available financing from a financial institution to perform the proposed contract for an extended period without receiving payment from the state.

Clarifications or negotiations may be conducted with the vendor after receipt of offers as appropriate. In those cases where negotiation is required, Best and Final Offers (BAFOs) may be needed to memorialize negotiated changes to the initial offer.

7.2.1. Narrative Evaluation

A narrative process of evaluation implementing the factors in G.S. 143-52 and the incorporated Best Value statute (G.S. 143-135.9) lists the evaluation criteria from the solicitation and the strengths and weaknesses of a vendor's proposal relative to those factors and the specifications of the solicitation, while giving priority to those factors weighted more highly. The evaluation should discuss each vendor's strengths or weaknesses relative to the evaluation criteria. The evaluation should never include any opinions or feelings.

Extensively listing strengths and weaknesses of vendors in a table and then concluding without discussion that a particular vendor should receive the award is subject to protest. As such, the use of the narrative evaluation requires a written explanation of the strengths and weaknesses of each proposal and a subsequent justification of why the recommended awardee provides the Best Value to the state. Many narrative evaluations fail to connect the dots and explain the conclusion reached after evaluation of the award criteria.

If using a narrative evaluation process, the evaluation committee should come to decision by consensus and be clear in its written evaluation about the basis for its evaluation and decision. Arguably, a clear and well-written narrative evaluation that has a rational basis should have an advantage over a numerical evaluation in any legal challenge to the award.

7.2.2. Numerical Evaluation

A numerical evaluation shall be based on measurable and objective criteria. The weight value and scoring methodology must be spelled out in the solicitation document. The results of the evaluation shall be in writing and preserved as a public record after award, which shall include individual scores from each evaluation team member or consensus scores agreed to by the team as a whole. Cost should be weighted and scored, as well as technical approach, qualifications, resources, experience, and any other criteria identified. Vendors are ranked from most advantageous to least advantageous to the state.

Evaluations shall be based on measurable and objective criteria. The solicitation document shall clearly identify weight value and scoring methodology, though these values may vary between solicitations. Scoring values are not standardized and can be developed as needed to maintain well-defined, fair, and equally measured evaluation criteria. An evaluation scoring example is below.

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.

For example, an offer with the lowest price 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. Clarifications and negotiations are allowed, as needed. The cost evaluation is calculated based on the lowest cost receiving the maximum points. The next ranking vendor(s) will receive a percentage of the maximum points, based on the formula.

Weighted evaluations can be scored and derived either by consensus or individually. Differences between consensus and individual evaluations are described below. Weighted evaluations should be supported with an explanation of the point distribution.

- Consensus Method. Evaluators reach one score collaboratively. This eliminates scoring discrepancies and reduces the potential for protests. Agreement on the average score does not necessarily equal consensus.
- Individual. Evaluators reach scores independently and then average those scores. This method increases the potential for scoring discrepancies but may be more logistically simple.

7.3. Two-Step Competitive Sealed Bidding

Two-step competitive sealed bidding separates the technical evaluation from the cost evaluation.

Under a two-step process, technical and cost proposals are submitted separately, although both must be received by the bid deadline. Solicitations must give notice that each component of the response must be distinct and must not include information relevant to the other. Therefore, the technical proposal shall not contain cost information and the cost proposal shall not contain technical information.

Each proposal shall be dated and signed by an authorized official. Unsigned proposals shall be rejected.

- Step 1. Technical proposals are opened and evaluated first. Cost proposals are held in safekeeping but are not opened and do not become public record until the technical offers have been evaluated.
- Step 2. If a vendor's technical proposal was accepted, their cost proposal may be opened. Vendor names and prices are then tabulated.

NCORR procurement shall notify bidders at least two working days prior to the cost opening. Technical and cost proposals shall be opened publicly with accepted bidders at the date, time, and location (including if virtual) as specified in the solicitation.

7.4. Lowest Price Technically Acceptable Method

For this evaluation method, the solicitation shall specify that the award will be made on the basis of the lowest evaluated price of those bids that meet or exceed the technical requirements. This method is commonly used for the IFB method. Awards shall be made to the responsive and responsible vendor with the lowest price whose bid meets the specifications of the solicitation. The solicitation shall provide the specifications that establish technical acceptability. The following shall apply:

1. Trade-offs between price and non-price factors are not permitted.
2. Vendor responses are evaluated for acceptability but are not ranked using the non- price factors.
3. If applicable, clarifications, communications, and negotiations may be permitted after receipt of the offer.

7.5. Best Value Trade-Off Method

The Best Value method of award is a trade-off method of source selection that is used when it is in the state's best interest to award to a response other than the lowest priced offer. This method is commonly used with an RFP. Best Value is determined by evaluating which vendor response provides the best trade-off between price and performance. See G.S. 143-52 and 143-135.9. For a solicitation using a trade-off source selection method, the following shall apply:

1. All evaluation factors that will affect the contract award decision and their relative importance shall be clearly stated in the solicitation.
2. 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.
3. 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.
 - a. 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.
4. The evaluation criteria must be clear and concise regarding the ranking and how the evaluation will be performed (i.e., points or narrative of strengths and weaknesses).

If applicable, clarifications, communications, and negotiations may be permitted after receipt of the offer. G.S.143-52 also provides the following factors for award:

- Prices offered.
- Best Value, as the term is defined in G.S. 143-135.9(a)(1).
- Quality of the articles offered.
- General reputation and performance capabilities of the bidders.
- Substantial conformity with the specifications and other conditions set forth in the request for proposals.
- Suitability of the articles for the intended use.
- Personal or related services needed.
- Transportation charges.
- Date or dates of delivery and performance.
- Such other factor(s) deemed pertinent or peculiar to the purchase in question.

Additional award criteria may be included in the solicitation document, including, by way of example:

- Location and availability of service, repair facilities, and personnel.
- References provided.
- Demonstration of proposed equipment, if required.

8. Awards

After evaluation criteria and the evaluation have been concluded, there is enough information to determine if an award is appropriate.

8.1. Bid Tabulations

A bid tabulation should be posted in the Interactive Purchasing System (IPS) within one business day of the bid opening, if possible. The tabulation should list, at a minimum, the names of the vendors that submitted a response. The tabulation should also include the make and model of the item offered and the delivery time where appropriate. If negotiation is anticipated, the pricing is not included as part of preliminary tabulation but is included in the final tabulation once an award is made.

For the preliminary tabulation or for a two-step RFP, one dollar should be listed as a placeholder in the IPS. If the “amounts bid” is not adaptable to being summarized, or if a summary would be misleading, a manual tabulation shall be prepared upon request and indicated in the comment section of the IPS tabulation.

8.2. Tie Bids

When the evaluation of two or more competitive solicitation responses results in a tie, the awarded vendor shall be selected by coin toss. Coin tosses shall be witnessed and documented in the procurement file by managers or other high-ranking agency administrators. Prior to a coin toss a Request for Best and Final Offer (BAFO) may be requested.

8.3. Communications with Vendors

During evaluation, communications with vendors is limited to NCORR procurement. The evaluation committee may request NCORR procurement clarify offers or negotiate with vendors after offers are received. BAFOs shall be signed to document the contract changes resulting from negotiations.

The evaluation committee may request NCORR procurement to request oral presentations or discussion with vendors to clarify the offers received.

8.4. Basis for Rejecting Offers

Vendor offers may be rejected in part or whole. See 01 NCAC 05B.0501. A basis for rejection may include:

- When the offer does not meet the specifications in the solicitation regarding quantity, quality, delivery, price, or service.
- When the offer does not comply with the requirements set forth in the solicitation document.
- When NCORR determines there is a lack of competition.
- When the solicitation contains errors.
- Cancellation or changes in the intended project or other determination that the proposed requirement is no longer needed.
- Dual or similar offers which prevent a Best Value procurement to be determined.
- Limitation or lack of available funds.
- Any determination that rejecting offers is in the best interest of the state.

8.5. Contract Negotiation

Negotiations between NCORR and potential vendors aim to achieve mutually satisfactory objectives and benefits and to reconcile differences on pricing and contract terms and conditions. See 01 NACA 05B.0112. Negotiations are conducted with vendors to allow for modifications to the terms and conditions, the pricing, or both.

NCORR may negotiate with one or more responsive vendors or reject all offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement. Negotiations may also be conducted with suppliers who merit a waiver of competition. See 01 NCAC 05B.0503.

Negotiations shall be conducted by NCORR with appropriate assistance from NCORR legal. Additional terms and conditions may be needed for specific procurements and should be part of negotiations as needed.

Offers and counteroffers may be made as necessary with each vendor to secure mutually agreeable contracts. After negotiations, NCORR will select the vendor(s) with the most advantageous proposal. Vendors shall submit written confirmation of modifications and final terms and conditions of the proposal. BAFO documents shall be used to document changes made through negotiation unless, for instance, a revised RFQ is issued after negotiation.

Successful negotiation is based on knowing the objective of the negotiation and deciding on the tactics to use in achieving that objective.

Negotiation plans for internal reference should be made beforehand and should guide the process to the desired outcome. These typically include:

- What are the issues to be negotiated?
- What terms or modifications is the state not able to accept?
- What specific outcome is desired on each issue?
- What is the least acceptable outcome?
- What issues are deal-breakers if negotiations are not successful?
- Why is the state seeking the change?
 - This should persuade vendors to agree but does not necessarily disclose all aspects of the state's situation, motivation, or needs.

8.6. Award Recommendation

Once evaluations and negotiations have been completed with one or more selected vendors, the evaluation committee must prepare a written narrative summarizing the rationale for the selected offer (Award Recommendation) as well as the reasons for non-selection of offers. See 01 NCAC 05B.0309.

The summary shall address the merits of the offer relative to the solicitation document and shall address positive or negative attributes as well as weak or non-supportive factors. When numerical points and/or percentages are used in the solicitation document, numerical and/or percentage criteria must be used in the evaluation exactly as noted in the solicitation document. Often each criterion is weighted, giving certain areas of the criteria more value relative to the award determination. Be sure that the final scores correctly reflect that weighting.

8.7. Notification of Award

Awarded vendors shall be notified of contract award. If the solicitation was advertised on P&C's electronic bid system, an award notice shall be posted there as well.

Posted award notices shall identify the contract and award information, awarded vendors, and pricing. Award notifications shall be posted to the electronic bid system within three calendar days of award.

Once bid evaluations are complete and a vendor has been selected, NCORR procurement should notify the selected vendor(s) of contract award. This notification should be provided prior to issuance of a purchase order: if a purchase order will be issued. For competitive sealed bidding, award information shall be posted publicly to the IPS.

8.7.1. Partial and Multiple Awards

Unless otherwise stated in the solicitation, partial, progressive, or multiple awards may be made for the following reasons:

- Due to insufficient funds.
- As a result of legislative mandates.
- Where it is advantageous to award separately by items.
- Where more than one vendor is needed to provide the contemplated requirements as to:

- Quantity.
- Quality.
- Delivery.
- Services.
- Geographical areas.

Care should be exercised to protect the character and principles of competition. See GS 143- 52.3.

9. North Carolina Procurement Initiatives

In an effort to support the state's economy, solicitations should contain information regarding initiative to encourage the use of resident vendors and Historically Underutilized Businesses (HUBs).

9.1. Resident Vendors

In an effort to utilize the buying power of the state to encourage North Carolina companies to do business with the state, stimulate economic development, and create jobs in North Carolina, Executive Order 50, Enhanced Purchasing Opportunities for North Carolina Businesses, was issued. This Executive Order (applicable to goods) gives the North Carolina vendors opportunity to select the option to match the price of the lowest responsible nonresident bidder, if the North Carolina resident bidder's price is within 5%) or \$10,000, whichever is less, of the nonresident bidder's price. The North Carolina resident bidder will first be offered the contract and will have two business days to accept or decline the award based on the lowest responsible bidder's price.

9.2. HUB Participation

Promoting and encouraging HUB participation in procurement opportunities is central to the economic growth and stability of the state. Pursuant to Executive Order 24, there is an expectation for all state agencies to pursue a goal of at least 10% of their total expenditures be with certified HUB firms. All cabinet agencies are required to work with DOA's HUB Office to develop a HUB utilization plan and a process to monitor progress. To meet this requirement NCORR submits a quarterly report to the DPS HUB Liaison Manager, who in turn submits the HUB report to the DOA HUB Office.

It is important for state entities to create opportunities for HUB vendors when researching procurement options. An area with great potential is procurements that are valued under the small purchase amount.

Certified HUB vendors can be found on the HUB Office website and searched by commodity or by using the NC eProcurement Vendor Search function. For all competitive solicitations, HUB participation information shall be incorporated into the solicitation, and NCORR's procurement office should work closely with the HUB Office and the DPS HUB Liaison Manager to partner in initiatives.

10. Post Award

After an award has been made, the following items must be complete or may be applicable, depending on the procurement method used.

10.1. Release of Confidential Information After Award

All information and documentation relative to the development of a solicitation document for a proposed procurement or contract shall be deemed confidential in nature, except as deemed necessary by NCORR procurement to develop a complete contractual document. Such material shall remain confidential until the award of a contract or until the need for the procurement no longer exists.

This confidentiality requirement includes all information and documentation relative to the development of a specification until award of a contract.

After contracts are awarded, or when there is no longer a need for the good or service, complete files shall become public record and made available to interested parties, with the exception of trade secrets or other information a vendor appropriately deemed confidential in its response. See 01 NCAC 05B.0103 and G.S. 132-1.2.

As a condition to confidential treatment, each page of the vendor's response containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. NCORR requires a separate document with all confidential information redacted (blacked out) be provided. This requirement is included in the solicitation document. Cost information shall not be deemed confidential under any circumstances. Regardless of what a vendor may label as a trade secret, the determination of whether certain information is or is not entitled to protection is determined in accordance with G.S. 132-1.2.

Confidential information must be redacted if documents are produced in response to a public records request. Per the April 12, 2023 directive of the DPS Communications Office it is the responsibility of the DPS public records team, in consultation with DPS General Counsel, to review and redact files.

10.2. Review for Acceptance

The NCORR business owner, in consultation with NCORR legal counsel, shall ensure that services comply with applicable codes, statutes, local ordinances, policies, and safety requirements. The business owner shall compare actual performance against performance measures, goals, deliverables, and objectives to determine whether all required work has been completed. Performance should be considered complete when the services are approved as acceptable by the NCORR Contract Manager or Project Manager unless otherwise stated in the contract.

Receiving is the act of taking possession and inspecting goods for acceptance based on the specifications of the solicitation document. When goods are received from a vendor it is important that they are reviewed to ensure compliance with the contract and the purchase order (if issued) and to confirm that the goods are not damaged. Goods shall be inspected at the time of receipt and compared against the

packing slip, if possible. Prompt acceptance of goods received is important to prevent any vendor claims that goods were “deemed accepted” by the state without actual inspection and acceptance by NCORR.

F.O.B. destination should be required in the solicitation document, so the risk of loss or damage to the goods will not pass to NCORR until delivery.

If all the specifications of the order are met and no damages are found, the item is received. All packing slips and any necessary paperwork should then be submitted to NCORR accounting so the invoice can be paid.

When damages or discrepancies are discovered, the vendor is to be immediately notified with specific information of the discrepancy. Damage should be documented by a dated photograph. Partial shipments shall be documented and raised with the vendor immediately upon discovery.

The NCORR business owner should inspect and test goods promptly upon receipt consistent with the following:

- NCORR shall inspect goods upon delivery to ensure compliance with contract requirements and specifications.
- NCORR may authorize revisions and cost adjustments as needed after inspections are completed to account for discrepancies in quantity, quality, or deviations from the specifications.
- NCORR shall ensure that goods comply with applicable codes, statutes, local ordinances, policies, and safety requirements.
- NCORR shall contact vendors about delivered products that fail to meet contract specifications or requirements and document these communications in the procurement file.

NCORR processes may be delayed if damaged goods are received. Sometimes damages are not discovered until packaging is opened, items are installed, or equipment is put into service. Vendors shall be notified as soon as damage is discovered and potential impacts on NCORR are documented.

When a discrepancy in part number(s) and/or products occurs, vendors may be placed in default if justified by the contract terms. Vendors should be notified immediately of order discrepancies, so they are afforded the ability to timely resolve these issues.

Inaccurate orders often create inaccurate invoices that compound the problem and ultimately require a meeting between NCORR business owner, NCORR purchasing, NCORR legal and the vendor to discuss vendor performance. NCORR should resolve inaccurate quantities with vendors by either obtaining credit or replacement of goods that were shorted from shipment. Business owners should notify purchasing of the nature and type of quantity discrepancies which may include:

- Too many/too few items.
- Shipping the wrong part number or wrong manufacturer part.
- Case quantities instead of the amount ordered, e.g., reams of paper versus cases of paper.

When shipments are late, the business owner should notify purchasing in writing, and should:

- Document late shipments.
- Issue a Vendor Complaint Form, if necessary, so further action can be taken.
- Determine if liquidated damages apply based on the language of the contract.

- Discuss issues with vendors that have multiple late shipments to identify root causes of delays and determine how the vendor can correct the issue moving forward.

10.3. Bid Protest

A bid protest is a process by which a vendor wishing to protest an award by the state can present for consideration their request for relief. Bid protests are governed by 01 NCAC 05B.1519. A vendor initiates a bid protest by sending a written request to protest the award to the correct receiving entity. The protest letter must be received within thirty calendar days of the award, or the protest is untimely and will not be heard.

Per 01 NCAC 05B.1519, “Vendors” are permitted to submit a bid protest. “Vendor” is defined as “a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual or other entity submitting a response to a Solicitation.” See 01 NCAC 05A.0112. Thus, a vendor must have submitted a response to the procurement at issue in order to submit a bid protest.

To ensure fairness to all vendors and to promote open competition, NCORR shall actively follow up and be consistent in responding to a vendor’s protest concerning contract awards.

Protests of contracts are heard by NCORR. See 01 NCAC 05B.1519. The below process shall be followed:

1. Vendor submits a written request for a protest meeting to the NCORR procurement officer listed in the solicitation within thirty calendar days from the date of award. The vendor's request shall contain the reasons why it has a concern with the award and any supporting documentation.
2. If a meeting is refused. Within ten calendar days from the date of receipt, the NCORR executive officer shall notify the vendor in writing that its protest met one of the following conditions:
 - a. It was not timely.
 - b. It did not contain required information.
 - c. It was meritless, and a meeting would have served no purpose.
3. If a meeting is granted. The meeting must be scheduled within thirty calendar days from receipt of the protest, unless mutually agreed.
 - a. Within ten calendar days after the meeting, the NCORR executive officer shall notify the vendor of the results of the protest meeting and the appeal rights under Article 3 of G.S. 150B.

If there is any further administrative or judicial review of the award, NCORR legal will notify the DPS Secretary in writing.

10.3.1. Bid Protest Meeting

Bid protest meetings are typically about one hour in length, but the duration may be adjusted due to complexity of the issues raised in the bid protest letter. The protest meeting is an informal, non-adversarial meeting in which the protesting vendor has the opportunity to further explain its position to NCORR. The awarded vendor may attend the protest meeting and provide a response to the protest allegations but is not required to do so.

Each party will be given a set period of time in which to present their argument.

Because it is an informal process, not a hearing, evidence does not need to be presented, and witnesses do not need to be called. Counsel may attend and present on behalf of the protesting or awarded vendor but is not required to do so.

The bid protest meeting is an opportunity for the protesting vendor to further explain its position, for the awarded vendor to provide any comments in response, and for NCORR to ask questions to further clarify the issues. The protesting vendor and the awarded vendor shall direct their comments to NCORR and not to one another. NCORR is not required to defend its position or answer vendor questions in the protest meeting.

10.4. Performance and Default

When performance issues arise in a contract, they should be resolved at the lowest possible level to have the performance remedied quickly and satisfactorily. If one or more material issues are not resolved, NCORR may find a vendor in default of contract for failing to perform in accordance with the contract requirements and terms and conditions. Attempts to correct may initially be managed informally, through conversation with the vendor. NCORR then may issue a Vendor Complaint Form to document any performance deficiency identified. The state has several documents frequently used to document performance issues and exercise contract default clauses:

- Requests to Cure. Utilized to issue a formal complaint regarding the performance of a vendor, to document vendor performance failures, and to obtain a response from the vendor on how they will prevent the issue from reoccurring.
- Notice of Default and Request to Cure letters are utilized to provide formal notice to a vendor that they are in default of a provision in a contract and require the vendor to cure that default within a specified timeframe or their contract will be terminated for cause.
- Notice of Termination and Remedies letters are utilized to provide formal notice to a vendor that they are being held in default under the contract and that the contract is being terminated. The letter may also advise the vendor of the remedy being sought, such as the additional cost of obtaining substitute goods or services.

For goods purchases, agencies may immediately purchase replacement goods on the open market and charge those expenses to vendors who are found in default for failing to perform in accordance with the contract's terms. See G.S. 25-2-712.

10.5. Debarred Vendors

Debarment means a vendor shall not be entitled to enter into a contract for goods or services, shall be placed on a debarred vendor list, and shall be removed from any distribution lists which may be utilized by P&C. 01 NCAC 05B.1520.

Vendors may only be debarred in limited circumstances, such as:

- Pursuant to G.S. 143-59.2, if the vendor or any officer, director, or owner is convicted of any violation under G.S. 78A, the Securities Act of 1933 or the Securities Exchange Act of 1934.
- By the SPO upon finding of fraud, misrepresentation, or other deceptive acts or practices while doing business with a state agency, found during an audit by the state auditor in accordance with

G.S. 147- 64.6(c)(21) or found after an internal audit by an internal auditor in accordance with G.S. 143-746(f).

- After a finding by the state auditor or internal auditor, the SPO's determination to debar a vendor shall be based on the following factors:
 - The severity of the conduct identified in the findings and any recommended actions by the state auditor or internal auditor.
 - The vendor's history of performance on one or more contracts.
- For failure to pay required eProcurement fees.

10.6. Contract Renewals and Extensions

Contracts may need to continue after the expiration of the initial contract term. Contract renewals and extensions allow for contract performance to continue under the same terms and conditions as the original contract period.

NCORR must consider and document the factors provided in 01 NCAC 05B.0321 prior to exercising a renewal or seeking a contract extension.

- Contract Renewals. Are provided for in the solicitation document. They may be exercised by NCORR as a matter of right and do not require the vendor to execute an additional contract document or otherwise agree to the extended contract term. See 01 NCAC 05A.0112. A notification should be sent to the vendor informing them that NCORR has chosen to exercise a renewal option from the contract.
- Contract Extensions. Are another mechanism for extending the life of a contract. Unlike renewals, contract extensions are not provided for in the original contract document. Both the NCORR and the vendor must agree to a contract extension, and a contract extension document must be drafted and executed by both parties. See 01 NCAC 05A.0112.
 - After the contract extension has been executed by NCORR and the vendor NCORR must post a public notification of the extension to P&C's electronic bid system for any solicitation initially posted to the IPS. The requirements of the posting are provided in 01 NCAC 05B.0320.

11. Record Keeping

A procurement file should be created for each procurement. 01 NCAC 05B.1903. Each file should contain all documents related to the procurement, including as applicable:

- Original offers if in writing, or written documentation of verbal offers received.
- A written, dated, and signed justification for award or cancellation.
- Worksheets and evaluations.
- A written, dated, and signed justification for waiver or emergency purchase.
- Tabulation of offers received.
- Copies of purchase orders (if applicable).
- Related correspondence.
- Reasons for receiving only one offer in response to a solicitation.

- Negotiated contracts.
- Reasons for not accepting technical proposals.
- Copies of any inspection reports (if applicable).
- Copies of requisitions, purchase orders, terms and conditions.

Procurement files shall be retained in accordance with NCORR records-retention schedules. Procurement files should be maintained with a naming convention that allows for files to be easily identified and organized.

11.1. Public Records

Solicitation information and documentation shall be confidential until a contract is awarded, except where deemed necessary by NCORR procurement to develop a complete contractual document. See 01 NCAC 05B.0103. During evaluations, only tabulation information shall be public record. Pricing may be withheld from the tabulation where negotiation is anticipated.

After contracts are awarded, but before they become public, DPS Public Records Officer, in consultation with DPS General Counsel, shall review and redact information marked confidential by the vendor. Pricing shall not be confidential.

The public may request to see an awarded or canceled procurement. This is formally called a public records request.

Public records are defined as all documents or materials made or received pursuant to law (or ordinance where municipalities are concerned) in connection with the transaction of public business by agencies of North Carolina government or its subdivisions. "Agency of North Carolina government or its subdivisions" shall mean and include every public office, public officer or official (state or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the state or of any county, unit, special district, or other political subdivision of government. See G.S. 132-1.

The public records and public information compiled by the North Carolina government, or its subdivisions, are the property of the people. Therefore, it is the policy of this state that the people may obtain copies of their public records and public information free or at minimal cost. "Minimal cost" means the actual cost of reproducing the public record or public information.

Public records requests should be referred to the North Carolina Department of Public Safety Communications Team for assistance. Public Records Requests adhere to NCDPS procedures.

Procurement files may need to be redacted to protect sensitive information before they are provided to the public. The public should not be permitted in file storage rooms or otherwise be allowed to view files without an NCORR representative present.

Personal identifiable information (PII) is the most common category of redacted information. G.S.75-61 and G.S. 14-113.2(b) define PII. For procurement purposes, commonly redacted information include.

- Social security numbers.
- Federal taxpayer identification numbers (EIN).

- Bank account or credit card information.
- Information marked “CONFIDENTIAL.”
- Vendor-submitted financial documents.

11.2. Contract Closeout

It is the responsibility of each Contract Administrator (business owner) to ensure that the work under the contract has been completed prior to final payment. Once that has been determined, contract closeout can occur. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. In addition, contract closeout is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

The contract closeout file (if required) should contain all necessary documentation relative to the agreement at the time of closeout. Contracts with active warranties shall not be closed out or receive final contract performance reviews until the warranty expires. With the exception of ongoing warranties, final payment should never be made until all work is complete and all deliverables are received and accepted.

A contract is ready for closeout when:

- All goods and services have been received, completed, and accepted by NCORR.
- All deliverables, including reports, have been delivered and accepted by NCORR. Contract administrators should compare actual performance against performance measures, goals, and objectives to determine whether all required work has been completed.
- All monitoring issues have been resolved.
- Vendor performance has been evaluated by comparing work completed against contract goals and objectives.
- Final acceptance from the Project Manager has been received (if applicable).
- Vendor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.
- Any deficiencies found as part of the closeout process are documented, and resolved, if possible.
- Final payment has been made.

In practice, many contracts cannot be closed out after the date the above items are all completed, because the warranty period is effective well beyond such date. Therefore, the contractor may not have “satisfactorily performed all required contractual obligations” until the end of the warranty period. Furthermore, sometimes even at that point the contract cannot be fully closed out because it may, for example, require the contractor to have repair parts available for years after contract award.

It is recommended to have a closeout process for contracts that allow sufficient time to finalize closeout procedures including completion of all final obligations and issuance of payments. Good contract management and administrative procedures require that contracts be closed out and filed, not open or unresolved for an extended amount of time beyond the expiration date.

11.3. Records Retention

Except where state law provides to the contrary, procurement documents shall be maintained for five years after contract expiration dates, plus one additional year after the conclusion of any litigation, even

if beyond the five-year period. Files shall be maintained individually for easy reference, whether maintained electronically or as hardcopy files.

NCORR should retain contracts for the duration of any applicable warranty.

NCORR should consult the North Carolina Department of Natural and Cultural Resources, State Archive website for more information about records retention requirements, public records, and best practices.

Appendix A - Department of Administration letter



Roy Cooper
Governor

Pamela B. Cashwell
Secretary

DATE: December 12, 2022
FROM: Donya Strong, General Counsel
TO: Laura Hogshead, Director, NC Office of Recovery and Resiliency
Jonathan Doerr, Deputy General Counsel, Department of Public Safety
RE: Hurricane Recovery Construction Exempt from G.S. § 143, Article 8

The Department of Administration (DOA) became aware after the September 14, 2022 meeting of the Subcommittee on Hurricane Response and Recovery, Joint Legislative Commission on Governmental Operations that the NC Office of Recovery and Resiliency (NCORR) had been constrained by the provisions of Article 8 of Chapter 143. In particular, the provisions of G.S. § 143-131(a) were problematic because that subsection requires informal bidding processes for any construction project over \$30,000, adding time and complexity to relatively low dollar rebuilding projects.

Consequently, DOA undertook an examination of G.S. § 143, Article 8 to explore how that Article applies to NCORR's hurricane recovery rebuilding activities. G.S. § 143-129(e)(2) exempts "cases of special emergency involving the health and safety of the people or their property" from Article 8 completely. Based upon the testimony provided at the hearing referenced above, it is clear that the unrepaired damage suffered by North Carolinians from Hurricanes Matthew and Florence is a continuing special emergency that threatens the health and safety of those affected. Therefore, it is the conclusion of DOA that the NCORR's construction contracts to rebuild or reconstruct from hurricane damage are exempt from G.S. § 143, Article 8.

Appendix B - NCORR Special Delegation

SPECIAL DELEGATION AGREEMENT

This **SPECIAL DELEGATION AGREEMENT** is entered into by and between the Department of Public Safety (DPS), Office of Recovery and Resiliency (NCORR) and the Department of Administration, Division of Purchase and Contract for projects related to 1) the construction or demolition of residential homes that have been impacted by natural disasters, including more specifically procurements funded by Federal or State grant dollars; 2) assist North Carolina's COVID-19 impacted citizens to prevent eviction and/or utility shutoff; 3) perform the resiliency planning for the state 4) administer the State's grant and loan programs and 5) any other program or need which the Governor requests NCORR perform that would otherwise fall under the purview of the Division of Purchase and Contract. The UNSPSC Commodity Codes that would be related to these projects include but are not limited to: 8110 Professional engineering services, 7215 Specialized trade construction and maintenance services, 9514 Prefabricated buildings and Structures, and 8010 Management advisory services.

RECITALS

- A. The Department of Administration is responsible for administering the State's program for the acquisition, management, and disposal of personal property, as well as the acquisition of services for its agencies. Acquisition of goods and services is entrusted to the Division of Purchase and Contract (P&C) through the State Purchasing Officer (SPO).
- B. The Administrative Code, 01 NCAC 05B .1603 (SPECIAL DELEGATIONS) authorizes the State Purchasing Officer (SPO) to approve, with conditions, an Agency to procure specific commodities and/or services when circumstances demonstrate that involvement by the Division of Purchase and Contract serves no practical purpose.
- C. By special delegation, the SPO authorizes an Agency's Executive Officer (Agency head or person with delegated signature authority) to authorize the advertisement of solicitations, approve waivers of competition, approve the evaluation committee's recommendation, certify the award, and execute contracts or other agreements on behalf of the Agency, including renewals, extensions, amendments, and modifications to previously approved contracts for the specific commodity codes listed herein. Any delegated signature authority must be in writing.
- D. The Department of Public Safety has requested an unlimited Special Delegation to manage recurring procurements related to the mission of NCORR.

NOW THEREFORE, in consideration of the mutual obligations set forth in this Agreement, and for other good and valuable consideration, the Agency shall accept the conditions of this Agreement as follows:

- A. The Agency may solicit, award, and execute contracts to advance the mission of NCORR, without limitation on contract price or source of funds.
- B. When the cumulative contract value exceeds one million dollars (\$1,000,000.00), the agency must comply with NCGS 143-50.1 (e).
- C. The Agency shall use the most recent P&C template versions as its official templates to ensure that all solicitation documents, contracts, and subcontracts include the required provisions. Any changes to the official templates must be approved by either the NCORR's legal counsel or the Contract Management Section of P&C.

- D. Solicitations must comply with State procurement rules and applicable federal regulations. For construction solicitations, P&C authorizes the Agency to waive competition up to an amount identical to federal Simple Acquisition Threshold.
- E. The Agency shall support State goals regarding purchases from businesses owned by minorities, women, and other disadvantaged groups; and businesses that further sound environmental policies, as such goals are stated in State law, policies, and orders. State agencies are encouraged, to the greatest extent possible without sacrificing competition, to ensure active participation by such businesses, and to seek new sources of goods and supplies from them.
- F. All procurements must be competitively bid, unless competition has been waived pursuant to the specific conditions listed in 01 NCAC 05B .1401.
 - 1) Solicitations, including requests to pre-qualify Vendors, must be publicly advertised on the State's Electronic Bid System. All solicitations that result in a pre-qualified list of Vendors, will then follow the process that is outlined in the original request to pre-qualify document, to make the individual award.
 - 2) If competitive bidding is waived, the Agency shall document the Executive's approval to waive competition in accordance with P&C's established process.
 - 3) To obtain the best price, negotiations are strongly encouraged. Agencies must adhere to Negotiation rule 01 NCAC 05B .0503 and maintain documentation in the Agency's official procurement file. P&C will assist the Agency with negotiations as requested.
- G. Agencies are expected to use eProcurement to the maximum extent practicable for sourcing, contract development and management, and ordering. Generally, deviations from eProcurement use must be approved by the SPO prior to solicitation. NCORR is encouraged to use eProcurement but is exempted from the requirement.
- H. Suppliers who do business with the State are expected to accept the State's General Terms & Conditions. Any deviation from the General Terms & Conditions must be documented and approved by legal counsel.
- I. Contracts subject to this Special Delegation must be reviewed by the Agency's General Counsel, or other Counsel, for legal sufficiency prior to final signatures.
- J. Any controversial matter arising from this Special Delegation must be brought to the attention of the SPO.
- K. Protests are the responsibility of the Agency and shall be managed according to the Statute and Administrative Code.


AGREEMENT

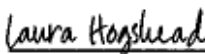
This Special Delegation is made pursuant to G.S. 143-53 and 01 NCAC 05B .1603.

The effective period of this Special Delegation is February 14, 2023, through December 31, 2024, or until such time as it is revoked by the State Purchasing Officer.

Special Delegations are not automatically renewed. Circumstances that previously justified approval of a Special Delegation are subject to change; therefore, prior approval does not guarantee future approval.

By executing this Agreement, both parties understand and agree to be bound by the Agreement regarding contract authority and procurement practices, as well as Division of Purchase and Contract and Agency policies, State and Federal laws.


 David O'Neal
 State Purchasing Officer

Acknowledged and agreed:

 Laura Hogshead
 Director, NCORR