



AGENDA
TOWN OF STOKESDALE
REGULAR TOWN COUNCIL MEETING
8325 ANGEL-PARDUE ROAD
STOKESDALE, NC 27357
NOVEMBER 10, 2022 AT 7:00PM

Available Venues to Watch/Attend:

- a) Attend in Person at Stokesdale Town Hall in Council Chambers at 7 PM.
- b) View Live Stream on Town of Stokesdale's YouTube Channel at 7 PM:
https://www.youtube.com/channel/UC1tJH7T0Q_56F_EDH6wljiA/live
- c) View & Participate (Citizen Comments) Virtually via Zoom at 7PM:
<https://us02web.zoom.us/j/84989966907?pwd=NjE5NThtMlVlVllZdko4L3Y4NjRtZz09>
Meeting ID: 849 8996 6907
Passcode: 925697
One Tap Mobile: 1-646-876-9923

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- 1. Call to Order, Pledge of Allegiance, and Invocation
 - 2. Review and Adopt the Agenda
 - 3. Public Safety Reports: Fire Department
 - 4. Administrative Reports:
 - a) Administrative Report from Deputy Town Clerk: Robbie Lee Wagoner II
 - b) Planning Board:
 - c) Events Committee:
 - d) Property Committee:
 - e) Town Park Improvement Committee:
 - 5. Financials: Finance/Budget Officer: Kim Thacker
 - 6. Citizen's Comments from the Floor (3-Minute Limit per Speaker).

NEW BUSINESS:

7. **Consideration of an Estimate submitted by Gauldin Plumbing for the materials and labor to install 2 Woodford model 17 faucets with stem lock, work expected to cost between \$1,000 and \$1,250 plus NC Sales Tax.**
8. **Consideration of a Certification of Municipal Declaration to Enact Speed Limits and Request for Concurrence for a speed limit reduction from 35 mph to 25 mph on Angel-Pardue Road.**
9. **Consideration of a Resolution to call for a Public Hearing on the closing of a portion of Angel-Pardue Road.**
10. **Discussion of American Rescue Plan (ARP) Policy and Procedures.**
11. **Review of North Carolina Procurement Manual for 2022.**
12. **Review of North Carolina General Statute 143-129.**
13. **Discussion of Improvements to Town Water System.**
14. **Presentation by Town Park Improvement Committee.**
15. **Citizen's Comments from the Floor (3-Minute Limit per Speaker).**
16. **Council Comments.**
17. **Adjournment.**

ANNOUNCEMENTS:

- **The Town of Stokesdale Town Planning Board will hold a meeting on Thursday, November 17, 2022, at 7:00 PM inside the Town Hall Council Chambers, located at 8325 Angel Pardue Road, Stokesdale, NC 27357.**
- **The Town of Stokesdale Town Council will hold a regular meeting on Thursday, December 08, 2022, at 7:00 PM inside the Town Hall Council Chambers, located at 8325 Angel Pardue Road, Stokesdale, NC 27357.**

NEXT LEVEL RECREATION OF THE CAROLINA'S INC.

4956 Long Beach Road SE. Suite 14, PMB Box 122
Southport, NC 28461

Proudly Representing:

Superior

RECREATIONAL PRODUCTS

A PLAYCORE COMPANY

MADE IN THE USA!!!!

Date: 10.27.2022

Bill To:	Ship To:
Town of Stokesdale	Town Hall-Stokesdale NC
P.O. Box 465	8325 Angel Pardue Rd
Stokesdale, NC 27357	Stokesdale, NC 27357
Deubtyclerk@stokesdale.Org	Delivery 9-4 M-F, call before 336-643-4011

Quantity	Model	Description	Item Price	Total Price
1	TR32	32 Gallon Receptacle-green, portable		685.00
2	Dome32blackHW	Dome Top for receptacle-Black		included
2	Liner32	Rigid plastic liner for TR32-black		included
		Freight		154.00
		Installation		n/a
		Subtotal		839.00
		Tax	6.75 Guilford	56.63
		Total		\$895.63

Prices quoted are by approved terms. Valid for 30 days from date of quote. Terms 50% due with order or provide a Purchase Order.

Balance is due upon receipt of goods or completion of installation if applicable.

Any required fees license or permits are the responsibility of the owner unless otherwise discussed.

A Trash Receptacle must be available for install crew to dispose of shipping materials. If a container must be rented, added fees may apply to final invoice.

If we hit rock upon start of install, customer will be responsible for any extra charges for equipment rental or extra labor to excavate or drill as needed to professionally install equipment.

Site must be ready to install, any extra grading or work needed to prepare the site will add to installation costs.

Owner is responsible for identifying any underground utility that is NOT public. 811 only identifies public utilities.

Site preparation is owner's responsibility unless included in install price.

Equipment quoted is IPEMA Certified with ASTM, CPSC, and ADA guidelines met.

Cobie Ellington

Cobie Ellington, Sales Consultant
cobie@ctc.net 704-763-3350 cell

Printed Name

Signature

Purchase Order Number

Town of Stokesdale
Balance Sheet
 22-Oct

	Total	Interest %	Mature Date
ASSETS			
Current Assets			
Bank Accounts			
ARPA - Fidelity Bank -7869	723,965.00	0.00%	
Bank of Oak Ridge Checking (Money Market)	23,314.99	0.30%	
Bank of Oak Ridge-CDARS			
CDAR - Acct # 1025707377	270,200.18	0.16986%	3/2/2023
CDAR- Acct#1026227972	279,499.57	0.29954%	3/2/2023
CDAR- Acct#1026317432	630,349.76	1.24226%	3/30/2023
CDAR - Acct #1026317459	53,398.47	1.24226%	3/30/2023
CDAR - Acct# 1025607275	313,876.73	0.16986%	1/26/2023
CDAR - Acct# 1025707369	171,524.33	0.16986%	3/2/2023
CDAR - Acct# 1026156862	139,606.20	0.24968%	2/9/2023
CDAR- Acct# 1026249895	431,257.00	0.29954%	3/9/2023
CDAR - Acct#1025951758	45,184.19	0.16986%	12/1/2022
CDAR - Acct#1025951766	49,501.75	0.16986%	12/1/2022
CDAR -Acct# 1025892913	178,231.22	0.07996%	11/10/2022
Total Bank of Oak Ridge-CDARS	\$ 2,562,629.40		
Fidelity Bank - 002762	294,283.27	0.05%	
Petty Cash	150.00	0.00%	
Total Bank Accounts	\$ 3,604,342.66		
Accounts Receivable			
Salary & F.I.C.A. Due from Water Enterprise	461.18		
Sales Tax 2022-2023	217.63		
Water Enterprise Reimbursement	11,425.84		
Total Accounts Receivable	\$ 12,104.65		
Total Current Assets	\$ 3,616,447.31		
TOTAL ASSETS	\$ 3,616,447.31		

Town of Stokesdale Budget vs. Actuals: FY2023 - FY23 P&L

Oct-22

	Actual	Budget	over Budget	% of Budget
Section A: Income				
American Rescue Plan - ARP	362,737.50	362,737.50	0.00	100.00%
Beer & Wine Excise Tax	0.00	21,000.00	-21,000.00	0.00%
Contributions & Donations - Parade	175.00	2,000.00	-1,825.00	8.75%
Greensboro-Jamestown Profit Share	0.00	20,000.00	-20,000.00	0.00%
Investment Earnings	2,347.32	5,000.00	-2,652.68	46.95%
Miscellaneous	18.75	1,000.00	-981.25	1.88%
Planning & Zoning Fees	2,950.00	35,000.00	-32,050.00	8.43%
Small Town Development Grant	0.00	50,000.00	-50,000.00	0.00%
State Collected Revenues (Utilities)	0.00	295,000.00	-295,000.00	0.00%
Town Hall & Park Facility Rentals	335.00	3,000.00	-2,665.00	11.17%
Total Income	\$ 368,563.57	\$ 794,737.50	-\$ 426,173.93	46.38%
Gross Profit	\$ 368,563.57	\$ 794,737.50	-\$ 426,173.93	46.38%
Section B: Expenses				
10000 - Capital Outlays			0.00	
10100 - Park Investment	2,010.00	412,737.50	-410,727.50	0.49%
Total 10000 - Capital Outlays	\$ 2,010.00	\$ 412,737.50	-\$ 410,727.50	0.49%
20000 - Cultural & Recreational			0.00	
20100 - Events Fund/Community Day	0.00	7,500.00	-7,500.00	0.00%
20300 - Park Electrical, Repairs, Cleaning, Lighting	1,006.79	6,000.00	-4,993.21	16.78%
Total 20000 - Cultural & Recreational	\$ 1,006.79	\$ 13,500.00	-\$ 12,493.21	7.46%
30000 - Economic & Physical Development			0.00	
Planning & Zoning	0.00		0.00	
30100 - Advertising - Planning & Zoning	305.40	6,500.00	-6,194.60	4.70%
30200 - Planning Fees - Planning & Zoning	12,500.00	25,000.00	-12,500.00	50.00%
Total Planning & Zoning	\$ 12,805.40	\$ 31,500.00	-\$ 18,694.60	40.65%
Total 30000 - Economic & Physical Development	\$ 12,805.40	\$ 31,500.00	-\$ 18,694.60	40.65%

40000 - General Administrative Expense	
40100 - Administrative Expenses, & Fees, Education	
40200 - Advertising (not zoning related)	
40300 - Membership & Dues	
40400 - Travel & Conferences	
40500 - Town Hall Repairs & Maintenance	
40600 - Office Equipment Purchase/Repair	
40700 - Housekeeping, Printing, Office Supplies & Software	
40800 - Postage	
40900 - Insurance, Bonding, Workers Comp	
41000 - Lawn/Outdoor Maintenance	
70100 - Town Hall Electricity	
70200 - Internet/Phone	
70300 - Security/Alarm	
70400 - IT Security & Website Design	
Total 40000 - General Administrative Expense	
60000 - Legal & Professional Services	
60200 - Audit	
60300 - Legal & Professional - Attorney	
Total 60000 - Legal & Professional Services	
80000 - Payroll Expenses	
80100 - F.I.C.A.	
80200 - Mileage Reimbursement	
80300 - Payroll Processing Fees	
80400 - Town Hall Staff Salaries	
80500 - Health Insurance	
80501 - State Retirement	
80600 - Stipends-Council Expense	
Total 80000 - Payroll Expenses	
90000 - Public Safety	
90100 - Fire Inspections & Investigations	
90200 - Guilford County / Animal Control Service	
Total 90000 - Public Safety	
90500 - Contingency Appropriations	

Budget vs Actual Oct22

Total Expenses	\$	150,906.90	\$	953,427.61	-\$	802,520.71	15.83%
Net Operating Income	\$	217,656.67	-\$	158,690.11	\$	376,346.78	-137.16%
<u>Section C: Reduction in GF Expenses from WE Fund Reimbursement</u>							
40600 - Office Equipment Purchase/Repair		0.00		(3,710.00)		-3,710.00	0.00%
40700 - Housekeeping, Printing, Office Supplies & Software		(3,707.52)		(10,600.00)		-6,892.48	34.98%
40900 - Insurance, Bonding, Workers Comp		(4,536.29)		(4,770.00)		-233.71	95.10%
70100 - Town Hall Electricity		(1,656.87)		(7,420.00)		-5,763.13	22.33%
70200 - Internet/Phone		(1,792.71)		(5,936.00)		-4,143.29	30.20%
70300 - Security/Alarm		(283.02)		(1,855.00)		-1,571.98	15.26%
70400 - IT Security & Website Design		(1,226.03)		(4,240.00)		-3,013.97	28.92%
60200 - Audit		0.00		(7,420.00)		-7,420.00	0.00%
80100 - F.I.C.A.		(2,286.30)		(8,117.11)		-5,830.81	28.17%
80300 - Payroll Processing Fees		(431.29)		(1,219.00)		-787.71	35.38%
80400 - Town Hall Salaries		(24,762.97)		(87,662.00)		-62,899.03	28.25%
80500 - Health Insurance		(2,391.55)		(10,176.00)		-7,784.45	23.50%
80501 - State Retirement		(1,366.31)		(5,565.00)		-4,198.69	24.55%
99000 - Water Enterprise Reimbursement -		(44,440.87)		(158,690.11)		-114,249.24	28.00%
TOTAL WATER ENTERPRISE REIMBURSEMENT		(44,440.87)		(0.00)			
TOTAL GENERAL FUND ACTUAL EXPENSES VS BUDGETED EXPENSES	\$	106,466.03	\$	794,737.50	\$	(688,271.47)	13.40%

Checks Debits Deposits

General Fund
Checks/Debits/Ach
Oct-22

Date	Transaction Type	Num	Name	Memo/Description	Clr	Amount	Balance
Beginning Balance							338,253.43
10/03/2022	Expense		NC Retirement	Sept 22 Retirement for FT Employees - TOS 12%	R	-1,188.06	337,065.37
10/04/2022	Expense		Blue Cross & Blue Shield	Employee/Employer Health Insurance - October	R	-1,258.56	335,806.81
10/04/2022	Deposit			Rental - Park	R	25.00	335,831.81
10/05/2022	Expense			ACH - Municipal Trust - Disability	R	-140.50	335,691.31
10/06/2022	Expense			Employee/Council - Net Pay	R	-5,531.99	330,159.32
10/06/2022	Expense			Employee/Employer Fed - NC - FICA	R	-2,041.95	328,117.37
10/07/2022	Check	50021	Tim Jones	Tim Jones - Stipend Check 50021	R	-234.43	327,882.94
10/10/2022	Bill Payment (Check)	6232	Excellence Lawncare & Landscaping	Monthly Lawncare	R	-2,000.00	325,882.94
10/10/2022	Bill Payment (Check)	6227	B & B Service Solutions	Monthly Cleaning Services	R	-495.00	325,387.94
10/10/2022	Bill Payment (Check)	6228	BB&T Financial, FSB		R	-1,848.32	323,739.62
10/10/2022	Bill Payment (Check)	6229	Blaney Electric Inc	Invoice # 23103 Shelter #2	R	-112.35	323,627.27
10/10/2022	Bill Payment (Check)	6230	Carolina Digital Phone	Monthly Services	R	-30.00	323,597.27
10/10/2022	Bill Payment (Check)	6231	Duke Energy	Monthly Services	R	-797.92	322,799.35
10/10/2022	Bill Payment (Check)	6233	Gray & Creech Office System	Contract Invoice 09/26/2022 - 09/25/2025 Invoice #N93466	R	-1,562.82	321,236.53
10/10/2022	Bill Payment (Check)	6234	Guilford County Finance Department	Planning Service Semi Annual Fee	R	-12,500.00	308,736.53
10/10/2022	Bill Payment (Check)	6235	Hunter Enterprises	Fertilization and Weed Invoice #1842	R	-4,400.00	304,336.53
10/10/2022	Bill Payment (Check)	6236	Mueller Septic Services	Sod Repair Invoice #1828	R	-300.00	304,036.53
10/10/2022	Bill Payment (Check)	6237	Sentry Watch, Inc	Invoice #7446174 Burg & Fire Agreement	R	-96.00	303,940.53
10/10/2022	Bill Payment (Check)	6238	Spectrum Business	Monthly Services	R	-815.62	303,124.91
10/10/2022	Bill Payment (Check)	6239	Tate X. Halvorsen	Meeting 10/14/2021 3.2 hours X's 3 = 9.6 hrs @ \$20.00/hr		-192.00	302,932.91

Checks Debits Deposits

10/10/2022	Bill Payment (Check)	6240	Tim Jones	Reimbursement - Home Depot \$54.38 Reimbursement - Guilford Locksmithing Inc \$24.98	-79.36	302,853.55
10/10/2022	Bill Payment (Check)	6241	Total Computer Solutions	Invoice #85314 - Monthly Monitoring		
10/11/2022	Deposit			Invoice #85411 -Computer running slow - Robbie	-487.91	302,365.64
10/12/2022	Payment		Water Enterprise Account	Tee Shirts	10.00	302,375.64
10/12/2022	Payment		Water Enterprise Account	September Reimbursement	21.30	302,396.94
10/12/2022	Payment		Water Enterprise Account	September Reimbursement	21.30	302,418.24
10/12/2022	Payment		Water Enterprise Account	September Reimbursement	21.29	302,439.53
10/12/2022	Payment		Water Enterprise Account	September Reimbursement	21.31	302,460.84
10/12/2022	Payment		Water Enterprise Account	September Reimbursement	257.17	302,718.01
10/12/2022	Payment		Water Enterprise Account	September Reimbursement (Shared Overhead Expenses)		
10/12/2022	Payment		Water Enterprise Account	September Reimbursement	10,319.90	313,037.91
10/13/2022	Deposit			Angel Farm Development - Plan Review	77.15	313,115.06
				ACH Payment ADP PAYROLL FEES ADP ACH	1,200.00	314,315.06
10/14/2022	Expense			Payment ADP PAYROLL FEES ADP FEES		
10/17/2022	Deposit			773064359967R07	-91.02	314,224.04
				Berico	150.00	314,374.04
10/18/2022	Bill Payment (Check)	6244	Great American Financial Services	Monthly Printer Lease	-251.28	314,122.76
10/18/2022	Bill Payment (Check)	6245	Guilford County Finance Department	Inv#151056 - 07/01/2022 -09/30/2022	-4,053.00	310,069.76
10/18/2022	Bill Payment (Check)	6246	Robbie Lee Wagoner II	43 miles @ 62.5 cents a mile	-26.88	310,042.88
10/18/2022	Bill Payment (Check)	6247	Wilson Pumping	Invoice #896618	-400.00	309,642.88
10/18/2022	Bill Payment (Check)	6248	Offit Kurman P.A.	September - October Invoices -	-5,200.00	304,442.88
10/18/2022	Bill Payment (Check)	6243	Duke Energy	Monthly Services	-878.30	303,564.58
10/18/2022	Bill Payment (Check)	6242	ChemSource Direct	Invoice #434998 - Supplies	-190.48	303,374.10
10/19/2022	Deposit			Angel Farm Development - Road Closure	250.00	303,624.10
10/20/2022	Expense			Federal - NC - FICA - Employee/Employer	-2,068.72	301,555.38
10/20/2022	Expense			Employee/Council Net Pay	-5,592.24	295,963.14
				ACH Payment NC TREASURER-DST ER ACH		
10/20/2022	Expense		NC Retirement	Payment NC TREASURER-DST ER EFT CSI	-1,171.23	294,791.91
				495925CCD533002		
10/20/2022	Expense			ACH Payment COLONIAL LIFE INS. P ACH Payment	-65.49	294,726.42
				COLONIAL LIFE INS. PREM. E5446000		

Checks Debits Deposits

10/27/2022	Expense	Deluxe For Business	Checks for General Fund	R	-391.29	294,335.13
10/27/2022	Deposit		Copies	R	0.50	294,335.63
10/28/2022	Expense		ADP PAYROLL FEES	R	-91.02	294,244.61
10/31/2022	Deposit		Interest Earned - Checking	R	13.66	294,258.27
10/31/2022	Deposit		Christmas - Parade - Diagnostic Radiology	R	25.00	294,283.27
					<u>-\$ 43,970.16</u>	

Water Enterprise Account
Balance Sheet
 As of October 31, 2022

	Total	Interest %	Mature Date
ASSETS			
Current Assets			
Bank Accounts			
Bank Of Oak Ridge CDARS			
CDAR - Acct# 1025459241	248,890.29	0.17%	12/1/2022
CDAR - Acct# 1025912485	74,400.40	0.08%	11/17/2022
CDAR - Acct#1025385752	116,289.43	0.17%	11/3/2022
CDAR - Acct#1025951774	60,618.66	0.16986%	12/1/2022
Total Bank Of Oak Ridge CDARS	\$ 500,198.78		
Capital Reserve Fund - CRF (0345)	186,490.17	0.05%	
Fidelity-Water Enterprise (0504)	625,497.48	0.05%	
NCCMT	527,304.90		
Regular Savings (0403)	45,055.55	0.02%	
Total Bank Accounts	\$ 1,884,546.88		
Accounts Receivable			
AR- Water Sales			
Active - 90+Days Past Due	27,437.35	0.00	0 Account
Inactive - 90+Days Past Due	6,010.20		27 Accounts
Sales Tax Refund 2022-2023	270.00		
Total Accounts Receivable	\$ 33,717.55		
TOTAL ASSETS	\$ 1,918,264.43		
LIABILITIES			
Liabilities			
Accounts Payable			
Water Reimbursement due to General Fund	11,425.84		
Payroll due to General Fund Account	461.18		
Total Accounts Payable	\$ 11,887.02		
Total Liabilities	\$ 11,887.02		
TOTAL LIABILITIES	\$ 11,887.02		

Water Enterprise Account

Budget vs. Actuals: FY 23 - FY 23 - FY23 P&L

	31-Oct		
	Actual	Budget	% of Budget
Section A: Income			
Backflow Preventer Fees	0.00	1,500.00	0.00%
Investment Income	4,388.30	2,000.00	219.42%
Taps & Connection Fee	6,000.00	55,000.00	10.91%
Water Capacity Fees	11,250.00	60,000.00	18.75%
Water Sales	207,905.02	525,000.00	39.60%
Damage Penalties/Meter Reading	455.00	1,500.00	30.33%
Late Fees	579.80	2,500.00	23.19%
Transfer from Fund Balance	0.00	0.00	
House Bill 436	0.00	1,154,081.75	0.00%
Total Income	\$ 230,578.12	\$ 1,801,581.75	12.80%
11000- Water Purchase	70,472.41	165,000.00	42.71%
Total Water Purchase	\$ 70,472.41	\$ 165,000.00	42.71%
Expenses			
12000 - Administrative		0.00	
12001 - Bond & Insurance	0.00	1,000.00	0.00%
12002 - Contract Operation	18,702.12	110,000.00	17.00%
12003 -Engineering Consultation Fees	14,242.50	35,000.00	40.69%
12004 - Dues & subscriptions	2,209.30	1,800.00	122.74%
12005 - ORC Gary Matchunis	8,000.00	16,000.00	50.00%
12006 - Postage	1,700.00	6,000.00	28.33%
12008 - F.I.C.A. Expense	163.86	765.00	21.42%
12009 - Mileage Reimbursement	433.83	2,000.00	21.69%
12010 - Salaries	2,142.00	10,000.00	21.42%
Office Expense			
Total 12000 - Administrative & Payroll Expenses	\$ 47,593.61	\$ 182,565.00	26.07%
13000 - Repairs & Maintenance			
13002 - Chemicals	0.00	700.00	0.00%
13003 - Chlorinator Maintenance	0.00	4,000.00	0.00%
13004 - Electricity Chlorinator Utilities	161.83	550.00	29.42%

Budget vs Actual Oct 22

13006 - Marking Water Lines 811	124.44	1,000.00	-875.56	12.44%
13007 - Supplies/Water Hydrant Maintenance	0.00	5,000.00	-5,000.00	0.00%
13008 - Water Line/Meter Installation/Gen Repair	4,000.00	15,000.00	-11,000.00	26.67%
13009 - Water Tank Maintenance	0.00	1,000.00	-1,000.00	0.00%
13010 - Water Testing	1,004.40	4,000.00	-2,995.60	25.11%
Water Lines and General Repairs				
Total 13000 - Repairs & Maintenance	\$ 5,290.67	\$ 31,250.00	\$ 25,959.33	16.93%
14000 - Water Capital			0.00	
14002 - Transfer to Capital Reserve Fund (CRF)	11,250.00	60,000.00	-48,750.00	18.75%
Total 14000 - Water Capital	\$ 11,250.00	\$ 60,000.00	\$ 48,750.00	18.75%
16000 - Meters			0.00	
16001 - Electronic Water Meters Changeout	0.00	25,000.00	-25,000.00	0.00%
16002 - Electronic Water Meters New Construction	10,995.60	20,000.00	-9,104.40	54.48%
Total 16000 - Meters	\$ 10,995.60	\$ 45,000.00	\$ 34,104.40	24.21%
17000 - Contingency Appropriations	0.00	4,994.89	-4,994.89	0.00%
*House Bill 436		1,154,081.75	-1,154,081.75	0.00%
15000 - Over Head Reimbursement Expense to General Fund				
15001 - Office Equipment Purchase/Repair	0.00	3,710.00	-3,710.00	0.00%
15002 - Housekeeping, Printing, Office Supplies & Software	3707.52	10,600.00	-6,892.48	34.98%
15003 - Insurance, Bonding, Workers Comp	4536.29	4,770.00	-233.71	95.10%
15005 - Audit	0.00	7,420.00	-7,420.00	0.00%
15006 - Town Hall Electricity	1656.87	5,936.00	-4,279.13	27.91%
15007- Internet/Phone	1792.71	1,855.00	-62.29	96.64%
15008 - Security/Alarm	283.02	4,240.00	-3,956.98	6.68%
15009 - IT Security & Website Design	1226.03	7,420.00	-6,193.97	16.52%
15010 - F.I.C.A.	2286.30	8,117.11	-5,830.81	28.17%
15011 - Payroll Processing Fees	431.29	1,219.00	-787.71	35.38%
15012 - Town Hall Salaries	24762.97	87,662.00	-62,899.03	28.25%
15013 - Health Insurance	2391.55	10,176.00	-7,784.45	23.50%
15014 - State Retirement	1366.31	5,565.00	-4,198.69	24.55%
55000 - Reimbursement to General Fund (Expense)	44,440.86	158,690.11	-114,249.25	28.00%
Total Expenses	189,943.15	1,801,581.75	-1,611,638.60	10.54%

Checks- Debits - Deposits October 22

Water Enterprise
Checks/Debits/Deposits
Oct-22

Date	Transaction Type	Num	Name	Memo/Description	Amount	Balance
Beginning Balance						623,450.04
10/04/2022	Deposit				1,838.59	625,288.63
10/04/2022	Deposit				173.19	625,461.82
10/05/2022	Deposit				72.96	625,534.78
10/05/2022	Deposit				484.53	626,019.31
10/06/2022	Deposit				215.61	626,234.92
10/06/2022	Deposit				444.30	626,679.22
10/07/2022	Deposit				142.27	626,821.49
10/07/2022	Deposit				208.25	627,029.74
10/10/2022	Bill Payment (Check)	5736	City of Winston Salem Water	Water Bill - September	-20,514.18	606,515.56
10/10/2022	Bill Payment (Check)	5736	Gary Matchunis	Operators Certifications issued by NC Dept of	-8,000.00	598,515.56
10/10/2022	Bill Payment (Check)	5737	Energy United	Environmental Quality - November payment	-53.89	598,461.67
10/10/2022	Bill Payment (Check)	5738	Lamb & Peoples Builders Inc	8428 Peony Drive Lot 115	-50.00	598,411.67
10/10/2022	Bill Payment (Check)	5739	Mr. John W. Fynt	Water Deposit Refund	-50.00	598,361.67
10/10/2022	Bill Payment (Check)	5740	Pace Analytical Servives LLC		-108.60	598,253.07
10/10/2022	Bill Payment (Check)	5741	Town of Stokesdale	September - Shared overhead/Gary's Salary	-10,739.42	587,513.65
10/10/2022	Bill Payment (Check)	5744	Gary Matchunis	September	-433.83	587,079.82
10/10/2022	Bill Payment (Check)	5742	Yates Construction Company, Inc.		-4,350.00	582,729.82
10/11/2022	Deposit				1,554.83	584,284.65
10/11/2022	Deposit				6,942.02	591,226.67
10/11/2022	Deposit				50.00	591,276.67
10/11/2022	Deposit		CJ Builders	CJ Builders	1,200.00	592,476.67
10/11/2022	Deposit				50.00	592,526.67
10/11/2022	Bill Payment (Check)	5683	Jeff Pegg	Water Deposit Refund	-25.00	592,501.67
10/11/2022	Deposit				123.94	592,625.61
10/11/2022	Deposit				295.21	592,920.82
10/11/2022	Deposit				80.05	593,000.87
10/11/2022	Deposit				261.44	593,262.31
10/12/2022	Deposit				1,200.00	594,462.31
10/12/2022	Deposit		CJ Builders	CJ Builders	698.36	595,160.67
10/12/2022	Deposit				67.97	595,228.64
10/13/2022	Deposit				258.65	595,487.29
10/13/2022	Deposit				32.80	595,520.09
10/13/2022	Deposit				58.32	595,578.41
10/14/2022	Deposit				277.28	595,855.69

Checks- Debits - Deposits October 22

10/14/2022	Deposit					38.05	595,893.74
10/17/2022	Deposit					1,048.27	596,942.01
10/17/2022	Deposit					458.15	597,400.16
10/17/2022	Deposit					84.96	597,485.12
10/18/2022	Deposit					2,688.93	600,174.05
10/18/2022	Deposit					368.50	600,542.55
10/18/2022	Bill Payment (Check)	5745	Anastasia Joyce	Water Deposit Refund		-8.62	600,533.93
10/18/2022	Bill Payment (Check)	5750	Pace Analytical Servives LLC			-108.60	600,425.33
10/18/2022	Bill Payment (Check)	5749	US POSTMASTER	Postage - Mailouts (Water Bills)		-900.00	599,525.33
10/18/2022	Deposit					87.27	599,612.60
10/18/2022	Bill Payment (Check)	5746	Department of Environmental Quality	NC0241035		-840.00	598,772.60
10/18/2022	Bill Payment (Check)	5747	Hillcrest Partners LLC	Water Deposit Refund		-23.36	598,749.24
10/18/2022	Bill Payment (Check)	5748	North Carolina 811, Inc.			-31.11	598,718.13
10/19/2022	Deposit					1,331.50	600,049.63
10/20/2022	Deposit					1,414.77	601,464.40
10/20/2022	Deposit					942.06	602,406.46
10/21/2022	Deposit					2,942.82	605,349.28
10/21/2022	Deposit					508.52	605,857.80
10/24/2022	Deposit					46.94	605,904.74
10/24/2022	Deposit					285.04	606,189.78
10/24/2022	Deposit					306.13	606,495.91
10/25/2022	Deposit					2,897.06	609,392.97
10/25/2022	Deposit					371.30	609,764.27
10/25/2022	Deposit					240.25	610,004.52
10/26/2022	Deposit					134.06	610,138.58
10/27/2022	Deposit					4,055.77	614,194.35
10/27/2022	Deposit					3,491.90	617,686.25
10/27/2022	Deposit					580.70	618,266.95
10/27/2022	Expense		Deluxe	Checks - Water Account		-391.29	617,875.66
10/28/2022	Deposit					141.05	618,016.71
10/28/2022	Deposit					1,785.97	619,802.68
10/31/2022	Deposit					26.46	619,829.14
10/31/2022	Deposit					3,753.82	623,582.96
10/31/2022	Deposit					196.49	623,779.45
10/31/2022	Deposit					353.35	624,132.80
10/31/2022	Deposit					195.34	624,328.14
10/31/2022	Deposit					165.00	624,493.14
10/31/2022	Deposit					434.59	624,927.73
10/31/2022	Deposit					368.65	625,296.38
10/31/2022	Deposit					201.10	625,497.48
						<u>\$ 2,047.44</u>	

Gauldin Plumbing and Pump, Inc.

PO Box 516

8581 Belews Creek Rd.

Stokesdale, NC 27357-0516

(336) 643-3857

Estimate

Date

10/7/2022

Name / Address

TOWN OF STOKESDALE

P.O. BOX 465

8325 ANGEL PARDUE RD

STOKESDALE, NC 27357

JOB NAME

Park

Description

MATERIAL AND LABOR- Install 2 Woodford model 17 Faucets W/Stem Lock

Work expected to cost between \$1000.00 - \$1250.00 plus NC Sales Tax

Price includes all materials (insulation, pipe, valves, hangers, faucets,) and Labor

NC LICENSE # 7068-P

This unit offers anti-siphon protection.

The Freezeless Model 17 is designed and intended for year-round residential irrigation purposes regardless of outside temperature. This faucet will not rupture from freezing when the valve is shut off and the hose is removed. The Model 17 contains an integral backflow protection device which protects up to 125 psi of backpressure and therefore does not require an add-on vacuum breaker. This ASSE 1019 device is intended for irrigation use and outdoor watering and shall not be subjected to more than (12) hours of continuous water pressure.

SPECIFICATIONS:

- Manufactured under one or more of the following patents: <https://www.woodfordmfg.com/patents>
- ASSE 1019 - Type C Listed
- CSA, cUPC Approved

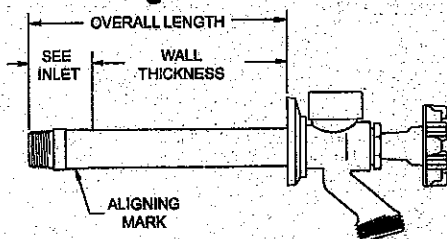


FEATURES:

- 3/4" male hose thread nozzle
- Stainless steel seat - eliminates wire draw
- EPDM packing to prevent leaking
- Full circle operating threads on valve body and retainer
- No-lead solder
- Standard "O" size seat washer
- Powder-coated, die cast aluminum handle
 - Optional Tee Key available (extra charge)
- Adjustable polycarbonate wall flange
- MAX PRESSURE - 125 p.s.i.
- MAX TEMPERATURE - 120° F

WARNING - Faucet must be installed with downward pitch toward nozzle and hose must be removed in freezing weather or faucet may freeze and burst.

Rough-In Dimensions



Wall Thickness (inches)

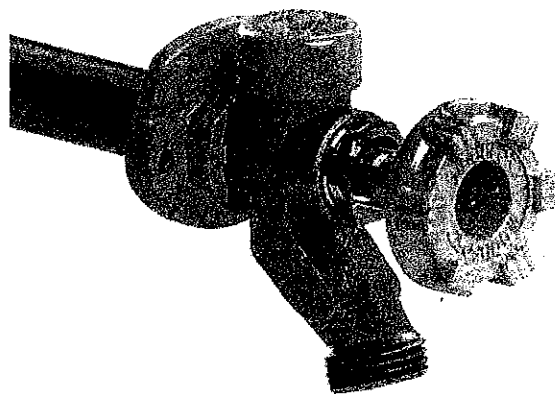
4	6	8	10	12	14	16	18	20	22	24
1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2

Shipping Wt. Ea. (lbs)

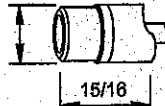
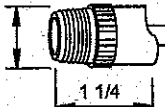
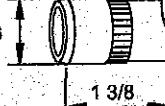
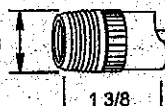
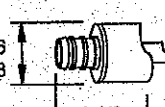
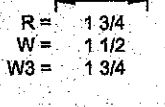
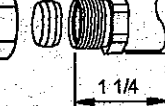
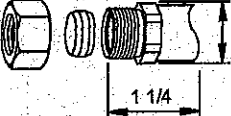
*Overall Length Dimension: Add wall thickness and Inlet option length shown in chart above.

For installation/Troubleshooting Instructions go to www.woodfordmfg.com or call 1-800-621-6032

Freezeless Anti-Siphon Wall Faucet Model 17

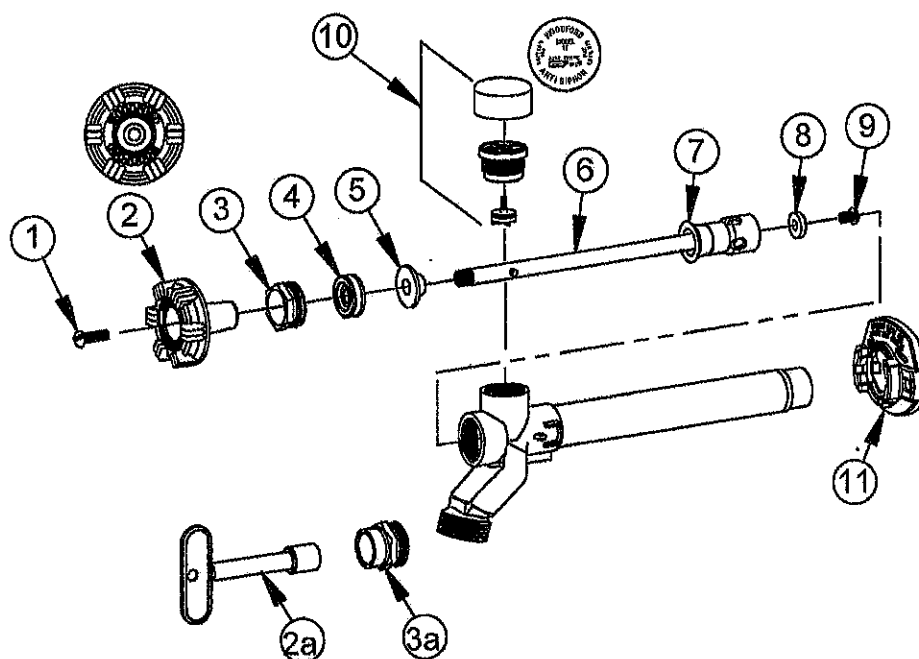


Inlet Descriptions

15/16		C Inlet COMBINATION Copper Sweat Fitting 1/2" K, L or M Inside 3/4" M Only Outside
15/16		CP Inlet COMBINATION 1/2" Male Pipe Thread 1/2" Female Sweat
1 1/16		C3 Inlet 3/4" Female Sweat Fitting
1 1/16		P Inlet COMBINATION 1/2" Female Pipe Thread 3/4" Male Pipe Thread
15/16		PX Inlet 1/2" PEX Tube Fitting
W3=1 1/8		PX3 INLET 3/4" PEX Tube Fitting
PX, PX3 = 1 1/8		R Inlet 1/2" Rehau Tube Fitting
R = 1 3/4		W Inlet 1/2" Wirsbo Tube Fitting
W = 1 1/2		W3 INLET 3/4" Wirsbo PEX Tube Fitting
W3 = 1 3/4		
15/16		CM Inlet COMBINATION 1/2" Compression Fitting 1/2" Copper Sweat Fitting

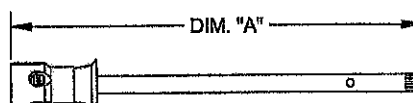
When ordering, specify model , inlet and wall thickness.

WOODFORD



MODEL 17 PARTS LIST

ITEM	PART#	DESCRIPTION
1	30002	Handle Screw
2	30096	Wheel Handle - Round Powder Coated Die Cast Aluminum
2a	50012	Tee Key (Optional)
3	30059	Packing Nut
3a	30512	Packing Nut w/deep stem guard (Optional)
4	30560	EPDM Packing
5	30421	Packing Support Washer
6	35XXX	Valve Stem Assembly (See chart at right) Includes Items 6, 7, 8 & 9
7	30459	Check Valve
8	30008	Valve Seat Rubber
9	30009	Retainer Screw
10	RK-17VB	Vacuum Breaker Float Kit
11	30098	Adjustable Flange
	RK-17MH	Repair Kit (Includes items 1-5, & 7-10)



VALVE STEM ASSEMBLY DIM "A"

Wall Thickness	Overall Length	Part No.
4	5 7/8"	35720
6	7 7/8"	35721
8	9 7/8"	35722
10	11 7/8"	35723
12	13 7/8"	35724
14	15 7/8"	35725
16	17 7/8"	35736
18	19 7/8"	35726
20	21 7/8"	35737
22	23 7/8"	35738
24	25 7/8"	35727

Woodford

Excellence
Since 1929
Proudly Made In The U.S.A.

For more information contact...

WOODFORD MANUFACTURING COMPANY

2121 Waynoka Road, Colorado Springs, Colorado 80915 • Phone: (800) 621-6032 • Fax: (800) 765-4115

To view our complete product line visit: www.woodfordmfg.com or email: sales@woodfordmfg.com

A Division Of WCM Industries, Inc.

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1082837

Division: 7 **County:** GUILFORD

Municipality: STOKESDALE

Type: Municipal Speed Zones

Road: SR 2102

Car: 25 MPH

Truck: 25 MPH

Description: (Angle-Pardue Road) between US 158 and End of Maintenance a point 0.076 mile south and west of SR 2199 (Adano Rd)

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ **Title:** _____ **Date:** _____

Region: _____ **Title:** _____ **Date:** _____

**North Carolina Department of Transportation
Traffic Engineering Accident Analysis System
Features Report**

County	Inventoried Route ID	Begin Milepost	End Milepost
GUILFORD	40002102	0.0	0.490

MP No	Feature ID	Feature Name/Type	Special Type	Distance to Next	Direction to Next	Beyond Route Loop Limits
0.000	20000158	US 158	At grade intersection, 4 legs	0.017	South and West	
0.017	40002101	SR 2101	At grade intersection, 4 legs	0.000	South and West	
0.017	50001177	ATHENS	At grade intersection, 4 legs	0.345	South and West	
0.362	40005039	SR 5039	At grade intersection, 4 legs	0.000	South and East	
0.362	40005040	SR 5040	At grade intersection, 4 legs	0.052	South and East	
0.414	40002199	SR 2199	At grade intersection, 3 legs	0.000	South and West	
0.414	50000191	ADANO	At grade intersection, 3 legs	0.076	South and West	
0.490	50039286	END OF MAINTENANCE	Non-Intersection	0.000	South and West	

RESOLUTION NO. R-2022-05
RESOLUTION ADOPTED BY STOKESDALE TOWN COUNCIL
CLOSING AND REMOVING FROM DEDICATION
A PORTION OF ANGEL PARDUE ROAD

WHEREAS, a petition was filed, pursuant to G.S. 160A-299, requesting that the Town Council close and remove from dedication the following described roadway:

Being that portion of said road, presently known as Angel Pardue Road (Secondary Road #2102) in Oak Ridge Township, as described further by metes and bounds in Exhibit A attached herein, Town of Stokesdale, NC.

WHEREAS, pursuant to a resolution of intent to close said road adopted by this Council on November 10, 2022, notice was published in the *Greensboro News and Record* once a week for four consecutive weeks that a public hearing would be held concerning said petition on December 8, 2022, at 7:00 P.M. at Stokesdale Town Hall, 8325 Angel Pardue Road, Stokesdale, North Carolina; and

WHEREAS, it appears that all owners of property adjoining said road have signed the petition or have been notified of the closing thereof; and

WHEREAS, after inquiry by the Mayor, all interested persons were provided an opportunity to be heard on the request contained in the petition; and

WHEREAS, after all interested persons were heard, it appears to the satisfaction of this Council that the removal of said road from dedication is not contrary to the public interest and that no individual owning property in the vicinity of said road will be deprived of any reasonable means of ingress or egress to his/her property;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The following described road in Stokesdale is hereby closed and removed from dedication to the public use:

Being that portion of said road, presently known as Angel Pardue Road (Secondary Road #2102) in Oak Ridge Township, as described further by metes and bounds in Exhibit A attached herein, Town of Stokesdale, NC.

2. A certified copy of this resolution, together with a copy of the published notice of the hearing is hereby ordered recorded in the Office of the Register of Deeds of Guilford County, North Carolina.

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF A RESOLUTION ADOPTED BY THE STOKESDALE TOWN COUNCIL AT A MEETING HELD ON DECEMBER 8, 2022.

Mayor, Town of Stokesdale

ATTEST

Clerk, Town of Stokesdale

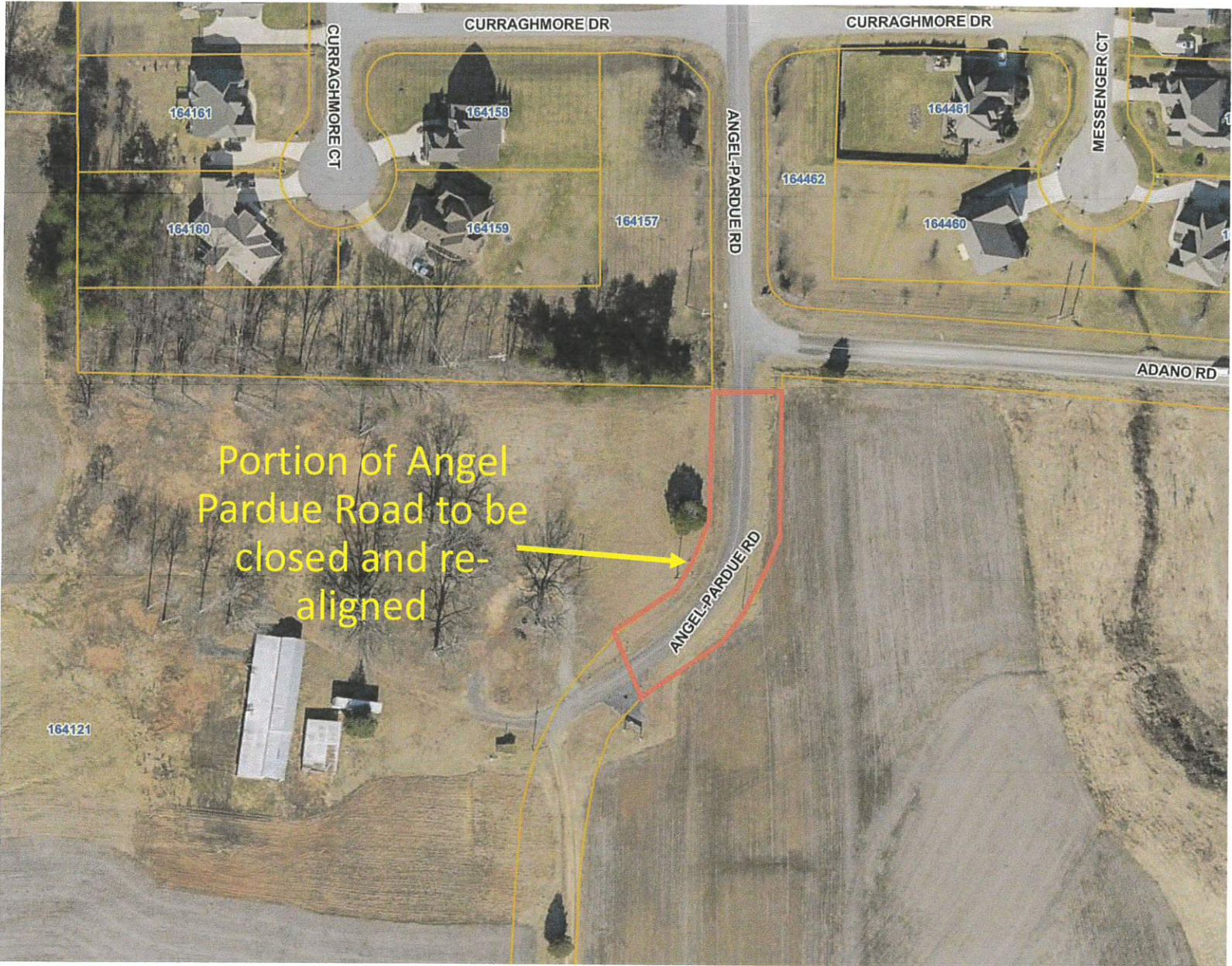
Case# 22-10-PLBD-00026

Exhibit A - Legal Description

COMMENCING FROM A FOUND IRON PIN ON THE EXISTING RIGHT-OF-WAY OF ANGEL PARDUE ROAD (DESCRIBED BOOK 5422, PAGE 775), SAID POINT BEING THE 'POINT OF BEGINNING'; THENCE, LEAVING SAID EXISTING RIGHT-OF-WAY OF ANGEL PARDUE ROAD (DESCRIBED IN BOOK 5422, PAGE 775) ON A BEARING OF S01°28'00" E, A DISTANCE OF 171.22 FEET; THENCE, ON A CURVE TO THE LEFT, HAVING A RADIUS OF 325.00 FEET, A CHORD BEARING S04°56'26" E, AND AN ARC LENGTH OF 40.23 FEET; THENCE, ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 215.00 FEET, A CHORD BEARING OF S41°41'21" W, AND AN ARC LENGTH OF 33.09 FEET; THENCE, BEARING S73°50'48"W, FOR A DISTANCE OF 119.99 FEET, TO A POINT ON SAID EXISTING RIGHT-OF-WAY OF ANGEL PARDUE ROAD (DESCRIBED IN BOOK 5422, PAGE 775); THENCE, ALONG SAID EXISTING RIGHT-OF-WAY, BEARING N32°47'59"W, A DISTANCE OF 13.88 FEET, TO A CORNER OF SAID EXISTING RIGHT-OF-WAY; THENCE, CONTINUING ALONG SAID EXISTING RIGHT-OF-WAY, N57°12'01"E, FOR A DISTANCE OF 83.70 FEET, TO A CORNER ON SAID EXISTING RIGHT-OF-WAY; THENCE, CONTINUING ALONG SAID EXISTING RIGHT-OF-WAY, N47°11'46"W, FOR A DISTANCE OF 39.24 FEET; THENCE, CONTINUING ALONG SAID EXISTING RIGHT-OF-WAY, N37°13'48"E, FOR A DISTANCE OF 44.05 FEET, TO A CORNER ON SAID EXISTING RIGHT-OF-WAY; THENCE, CONTINUING ALONG SAID EXISTING RIGHT-OF-WAY, N16°14'16"E, FOR A DISTANCE OF 32.81 FEET, TO A CORNER ON SAID EXISTING RIGHT-OF-WAY; THENCE, CONTINUING ALONG SAID EXISTING RIGHT-OF-WAY, N00°56'54"E, FOR A DISTANCE OF 119.11 FEET, TO AN EXISTING FOUND IRON PIN ON THE EXISTING RIGHT-OF-WAY OF ANGEL PARDUE ROAD, SAID POINT BEING THE 'POINT OF BEGINNING'.

AND

COMMENCING AT A FOUND IRON PIN ON EXISTING ANGEL PARDUE RIGHT-OF-WAY (BOOK 5422, PAGE 775); THENCE, LEAVING THE EXISTING RIGHT-OF-WAY OF ANGEL PARDUE ROAD FROM SAID FOUND IRON PIN FOR A DISTANCE OF 304.56 FEET ; ON A BEARING OF S10°17'31"W, TO A POINT ON SAID EXISTING RIGHT-OF-WAY LINE, SAID POINT BEING THE 'POINT OF BEGINNING'; THENCE, ALONG SAID RIGHT OF WAY, S57°12'01"W, FOR A DISTANCE OF 21.62 FEET, TO A POINT ON SAID RIGHT OF WAY; THENCE ALONG SAID RIGHT-OF-WAY, N32°47'59"W, FOR A DISTANCE OF 6.47 FEET, TO A POINT ON SAID RIGHT-OF-WAY; THENCE LEAVING SAID RIGHT-OF-WAY LINE, N73°51'52"E, FOR A DISTANCE OF 22.57 FEET, TO A POINT ON SAID EXISTING RIGHT-OF-WAY, SAID POINT BEING THE 'POINT OF BEGINNING'.



Portion of Angel
Pardue Road to be
closed and re-
aligned

ANGEL-PARDUE RD



Coates' Canons NC Local Government Law

American Rescue Plan Act of 2021 Coronavirus State and Local Fiscal Recovery Funds (ARP/CSLFRF): The Standard Allowance

Published: 04/05/22

Last-Revised: October 27, 2022

Author Name: Kara Millonzi

What is the Standard Allowance?

The **Final Rule** implementing the ARP/CSLFRF authorizes 4 main expenditure categories:

1. *Addressing the COVID-19 public health emergency and its negative economic impacts*: authorizing projects that address the ongoing pandemic or its negative economic impacts on certain households, groups, areas, or the local government itself
2. *Premium pay*: authorizing additional pay for local government employees (and employees in certain other sectors) for work performed in person during the pandemic and targeted to low or moderate income employees or those who experience unique financial or health risks from working during the pandemic
3. *Necessary water, wastewater, stormwater, and broadband infrastructure*: authorizing investments in certain water, wastewater, stormwater, and broadband infrastructure projects
4. **Revenue replacement: authorizing expenditures for the provision of government services**

The Standard Allowance relates to the Revenue Replacement category. With the Interim Final Rule (which is no longer in effect), a local government had to use a detailed formula to calculate whether it experienced or will experience lost revenue growth over a 4-year period from 2020 through 2023. If the formula revealed lost revenue growth in any year, the local government could expend up to that amount in the Revenue Replacement category. Based on the formula most NC local governments did not experience lost revenue growth and are not projected to experience it for the remainder of the calculation period. Again under the Interim Final Rule, that meant that most NC local governments could not expend any of their ARP/CSLFRF funds as Revenue Replacement. **Luckily, the Final Rule (effective now) added another option—the Standard Allowance. The Standard Allowance allows a local government to expend up to their full allotment of ARP/CSLFRF funds (up to a maximum of \$10 million) in the Revenue Replacement category WITHOUT having to demonstrate any actual lost revenue growth.** All local governments receiving from \$1 through \$10 million in

ARP/CSLFRF funds should elect the Standard Allowance. Local governments receiving over \$10 million in total ARP/CSLFRF funds may elect either the Standard Allowance or the (now modified) Formula Approach, if the formula approach is expected to reveal more than \$10 million in lost revenue growth.

Why would a local government want to spend some or all of its ARP/CSLFRF funds in the Revenue Replacement category? First, expending ARP/CSLFRF in the Revenue Replacement category allows for a much broader array of potential expenditures. **A local government may expend ARP/CSLFRF funds in this category for the provision of government services. This likely includes anything that a local government has state law authority to spend money on, including general fund and enterprise fund expenditures, capital and operating expenditures, and even administrative expenditures, such as employee salaries/benefits.** US Treasury did not define “government services” but has provided non-exclusive lists of examples that illustrate how broad this category is:

From the US Treasury Final Rule Supplement

Government services include, but are not limited to, “maintenance or pay-go funded building of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.”

From the US Treasury Final Rule Overview

“Government services generally include any service traditionally provided by a government, unless Treasury has stated otherwise. Here are some common examples, although this list is not exhaustive: Construction of schools and hospitals; Road building and maintenance, and other infrastructure; Health services; General government administration, staff, and administrative facilities; Environmental remediation; [and] Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles).”

The Final Rule also allows Revenue Replacement funds to be used as the non-federal match in other federal programs (assuming it is allowed by the other federal programs). Expending ARP/CSLFRF in the Revenue Replacement category thus affords a local government the most flexibility to make the best possible investment with these one-time funds for its community. Second, US Treasury has significantly reduced the reporting and compliance burden on Revenue Replacement expenditures relative to the other categories.

Does electing the Standard Allowance force the local government to make specific expenditures? No. Electing the standard allowance simply allows a local government to spend up to its full allocation of ARP/CSLFRF (up to a maximum of \$10 million) on the provision of government services. It does not mandate specific expenditures and it does not prevent a local government from expending some or all of its ARP/CSLFRF funds in one or more of the other categories.

Does electing the Standard Allowance automatically give every local government \$10 million in ARP/CSLFRF funds? Unfortunately no. Electing the Standard Allowance does not change a local government’s total allocation of ARP/CSLFRF funds. It allows a local government to spend up to its entire allotment (up to a maximum of \$10 million) in the Revenue Replacement category. The \$10 million cap only applies to local governments whose total allocation exceeds \$10 million.

If a local government elects the Standard Allowance does it have to spend all of its ARP/CSLFRF (up to the \$10 million maximum) in the Revenue Replacement category? No. Electing the Standard Allowance just indicates the maximum amount a local government may spend in the Revenue Replacement category (up to its total allocation or \$10 million, whichever is lower). It does not require a local government to spend all, or even any, of its ARP/CSLFRF funds in the Revenue Replacement category, although as detailed above there are advantages to a local government spending as much as possible as Revenue Replacement because of its expenditure flexibility and more streamlined reporting.

If a local government identified a project in another category, may it now spend ARP/CSLFRF funds on the same project through the Revenue Replacement category? Yes. Because the expenditure authority in the Revenue Replacement category is so broad (the provision of government services), it encompasses all of the allowable expenditures in the other categories.

When must a local government elect the Standard Allowance (or Formula Approach) for Revenue Replacement? US Treasury initially required that a local government elect either the Standard Allowance or the Formula Approach for Revenue Replacement in the April 30, 2022 Project and Expenditure Report. **But Treasury has subsequently indicated that it will allow a local government to make this election at least through the April 30, 2023 report.**

Does a local government have to know how it will expend all of its ARP/CSLFRF funds to elect the Standard Allowance? No. Electing the Standard Allowance allows the local government to spend up to its full ARP/CSLFRF (up to a maximum of \$10 million) in the Revenue Replacement category. A local government does not have to know how it will expend its ARP/CSLFRF funds before electing the Standard Allowance.

Does a local government need to adopt a budget for its ARP/CSLFRF funds to elect the Standard Allowance? No. A local government must adopt a budget (ideally a grant project ordinance) before obligating or expending any of its ARP/CSLFRF funds, but it does not have to adopt a budget or make any expenditure decisions before electing the Standard Allowance (or Formula Approach).

Does a local government's governing board need to vote to approve the election of the Standard Allowance (or Formula Approach)? The law does not require a board vote on this decision, however, a local government should follow its board's general directives or practices for these types of decisions. Some boards are more involved in the day-to-day operations of the government than others.

What compliance requirements apply to Standard Allowance Revenue Replacement expenditures? As detailed [here](#), in July 2022, US Treasury significantly reduced the compliance requirements for Revenue Replacement expenditures.

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Coates' Canons NC Local Government Law

American Rescue Plan Act of 2021: New (Fewer) Compliance Requirements for Revenue Replacement Expenditures

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As detailed in previous posts, the American Rescue Plan Act of 2021 Coronavirus State and Local Fiscal Recovery Funds (ARP/CSLFRF) allows local governments to spend their allocations on eligible *projects* within four major expenditure groupings:

1. Addressing the COVID-19 public health emergency and its negative economic impacts
2. Premium pay for eligible workers performing essential work during the pandemic (see blog post on premium pay for local government employees)
3. Necessary water, wastewater, and broadband infrastructure
4. Revenue replacement for lost revenue growth

There are detailed Expenditure Categories (ECs), which are more like subcategories, within each of these four broader categories. See the Appendix to US Treasury's Compliance and Reporting Guidance for the list of ECs. Each project must be associated with one, and only one, EC. A project is a group of related expenditures. Projects in this context may include expenditures for operational, administrative, programmatic, and capital purposes.

Many local governments will spend all, and most local governments will spend at least a portion, of their ARP/CSLFRF funds in the revenue replacement category (EC 6.1 or 6.2). A local government may spend up to \$10 million or its entire allotment of ARP/CSLFRF funds, whichever is lower, in this category, without having to demonstrate any actual lost revenue growth. Yes, you read that correctly. **A local government may expend its ARP/CSLFRF allocation, up to a maximum of \$10 million, in the revenue replacement category even if it did not experience any revenue loss due to the pandemic.** (See blog post on the standard allowance.) Local governments with a total ARP/CSLFRF allocation over \$10 million may spend more than \$10 million as revenue replacement if a detailed formula reveals more than \$10 million in actual lost revenue growth due to the pandemic. Otherwise, they are capped at \$10 million under what is known as the standard allowance.

The benefit of the revenue replacement category is that it allows a **local government to spend its ARP/CSLFRF funds for almost any purpose authorized by state law, with fewer compliance requirements and more streamlined reporting.** As indicated below, there are a few expenditures that are prohibited by the ARP/CSLFRF. Aside from these

prohibited expenditures, a local government is generally free to spend its ARP/CSLFRF funds as it would its other unrestricted revenue sources.

This blog post details eligible expenditures and compliance requirements for revenue replacement. It highlights recent changes by US Treasury (as of July 2022) to further reduce the compliance burden in this category. **It then provides a specific roadmap to making revenue replacement expenditures, along with a downloadable checklist.** (Many of you will want to skip directly to that section.)

Revenue Replacement Expenditures

Allowable Expenditures

Revenue replacement ARP/CSLFRF funds may be spent on the *provision of government services*. US Treasury does not define “government services,” but provides several non-exclusive examples:

In **US Treasury’s Final Rule Supplement**, government services include: “maintenance or pay-go funded building of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.”

In **US Treasury’s Final Rule Overview**, it states: “[g]overnment services generally include any service traditionally provided by a government, unless Treasury has stated otherwise. Here are some common examples, although this list is not exhaustive: Construction of schools and hospitals; Road building and maintenance, and other infrastructure; Health services; General government administration, staff, and administrative facilities; Environmental remediation; [and] Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles).”

And in **US Treasury’s FAQs on the Final Rule**, the answer to Q 3.2 states: “Treasury is clarifying here that under the final rule, payroll for government employees, contracts, grants, supplies and equipment, rent, and the many other costs that governments typically bear to provide services are costs that could comprise the costs of government services, and are eligible uses of funds.”

As these examples attest, **the authority to expend ARP/CSLFRF funds in the revenue replacement category is very broad. It encompasses almost anything a local government has state law authority to undertake, including general fund and enterprise fund expenditures, operating and capital expenditures, administrative costs, salaries and benefits, and other internal costs, and external contracts for projects and services. And the ARP/CSLFRF allows a local government to reimburse itself for eligible expenditures incurred all the way back to March 3, 2021.**

Prohibited Expenditures

There are certain prohibited expenditures, though. ARP/CSLFRF funds, even revenue replacement ARP/CSLFRF funds, **MAY NOT** be spent on (1) extra pension fund contributions; (2) borrowing costs or debt service (loan) payments; (3) financial reserves / rainy day fund contributions; (4) litigation costs, including settlements / judgements / consent decrees;

(5) expenditures that undermine or discourage compliance with Centers for Disease Control (CDC) guidelines; (6) expenditures that violate federal conflict of interest provisions; and (7) expenditures that violate state law or other federal laws and regulations, including applicable Uniform Guidance requirements.

Revenue Replacement Compliance Requirements

Although the compliance and reporting mandates for revenue replacement are more streamlined than those that apply to the other ARP/CSLFRF categories, there are still some federal substantive and process requirements (in addition to applicable state law requirements). Specifically, a local government must comply with the ARP/CSLFRF Award Terms and Conditions, specified Uniform Guidance provisions, and any applicable state law provisions.

Award Terms and Conditions

All ARP/CSLFRF expenditures, including revenue replacement expenditures, are subject to the grant award terms and conditions. They are detailed [here](#). The major provisions are summarized as follows:

Eligible Use. A local government may only use ARP/CSLFRF funds for an eligible use, as defined by the ARP/CSLFRF Final Rule. *As detailed above, an eligible use in the revenue replacement category is any expenditure a local government has state law authority to make, except as specifically prohibited by the ARP/CSLFRF Final Rule (see prohibited expenditures above).*

Period of Performance. A local government may only use ARP/CSLFRF funds for eligible costs incurred from March 3, 2021 through December 31, 2024. And all ARP/CSLFRF monies must be expended by December 31, 2026. A cost is incurred when it is legally obligated and expended when the amount is due for payment. Reimbursement expenditures are allowed as long as the cost was incurred for an eligible project on after March 3, 2021.

Reporting. A local government must comply with reporting obligations established by US Treasury for the ARP/CSLFRF. The reporting requirements are detailed [here](#).

Maintenance of and Access to Records. A local government must maintain records and financial documents sufficient to evidence compliance with the ARP/CSLFRF and all applicable regulations. The US Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, have the right of access to records (electronic and otherwise) to conduct audits or other investigations. All ARP/CSLFRF records must be maintained for a period of five (5) years after all funds have been expended or returned to US Treasury, whichever is later.

Conflicts of Interest. A local government must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c). The local government must disclose in writing to US Treasury any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

Compliance with Applicable Laws and Regulations. A local government must comply with the requirements of ARP/CSLFRF, regulations adopted by US Treasury pursuant to the ARP/CSLFRF, and other applicable guidance issued by US Treasury. It also must comply with all other applicable federal statutes, regulations, and executive

orders. Federal regulations applicable to this award include, without limitation, the following:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award. *As detailed below, US Treasury has exempted revenue replacement expenditures from some of these requirements.*
- Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- Generally applicable federal environmental laws and regulations.

Civil Rights Compliance. A local government must assure compliance with federal civil rights laws.

Hatch Act. A local government must comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

Protections for Whistleblowers. A local government must provide whistleblower protections related to the grant in accordance with 41 U.S.C. § 4712.

Uniform Guidance Provisions

As part of the ARP/CSLFRF Award Terms and Conditions, a recipient local government must follow the federal Uniform Guidance in implementing the grant. The Uniform Guidance, 2 CFR 200, is a set of federal regulations that apply to federal awards. The **Assistance Listing: Coronavirus State and Local Fiscal Recovery Funds** specifies the Uniform Guidance (UG) provisions that apply to the ARP/CSLFRF. However, as of July 27, 2022, US Treasury has exempted revenue replacement expenditures from some of the most challenging of these requirements. **A local government must only follow the specific UG regulations identified in Final Rule FAQ 13.15 for revenue replacement expenditures.** They are:

- **Subpart A, Acronyms and Definitions**
- **Subpart B, General provisions**
- **Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards** (except 2 CFR 200.204, .205, .210, and .213)
- **Subpart D, Post Federal; Award Requirements (But only the provisions listed below)**
 - 300 Statutory and national policy requirements.
 - 200.302 Financial management.
 - 200.303 Internal controls.
 - 200.328 Financial reporting.
 - 200.329 Monitoring and reporting program performance.
 - Record Retention and Access (2 C.F.R. 200.334 – 200.338)
 - 334 Retention requirements for records.
 - 335 Requests for transfer of records.
 - 336 Methods for collection, transmission, and storage of information.
 - 337 Access to records.
 - 338 Restrictions on public access to records.
 - 339 Remedies for noncompliance.
 - 340 Termination.
 - 341 Notification of termination requirement.
 - 342 Opportunities to object, hearings, and appeals.
 - 343 Effects of suspension and termination.
 - 200.344 Closeout.
 - 200.345 Post-closeout adjustments and continuing responsibilities.
 - 200.346 Collection of amounts due.
- **Subpart E, Cost Principles (But only 200.400(a)-(c) and (e); 200.403(a), (c), (d), (g), and (h); 200.404(e))**
- **Subpart F, Audit Requirements** (Unless eligible for **alternative compliance engagement**)
- **2 CFR Part 25** (Universal Identifier & System for Award Management)

As a practical matter this means that revenue replacement expenditures are NOT subject to federal procurement and contracting requirements, program income, property management, subawards, and Federal Funding Accountability and Transparency Act (FFATA) reporting. And revenue replacement expenditures are subject to a more limited allowable cost/cost principles review. Although it appears that a local government is still subject to many UG provisions, the good news is that they are relatively straightforward to implement.

State Law Provisions

A local government must also follow any state law provisions applicable to specific projects. For example, if revenue replacement funds are used for a construction project, state law bidding and contracting laws apply, even though federal provisions do not.

Roadmap for Revenue Replacement Expenditures

Putting this all together, the following provides a step-by-step guide to making ARP/CSLFRF revenue replacement expenditures. (And [here](#) is a .pdf version to download for your convenience.)

STEP 1: ESTABLISH FINANCIAL MANAGEMENT SYSTEM AND ADOPT WRITTEN INTERNAL CONTROLS

Before making any specific revenue replacement expenditures, a local government must establish its general compliance framework. That includes the following:

Set up basic financial administration. A local government must have a financial management system that is sufficient to allow it to complete all necessary reporting requirements related to the ARP/CSLFRF award. It does not have to be a sophisticated system. For many local governments a simple spreadsheet will suffice. At a minimum, a local government must track obligations and expenditures of ARP/CSLFRF funds by project and include real-time comparisons to budgeted amounts for those projects. If a local government's current financial management system does not allow for this level of tracking, staff may use one of these Excel Tracking Templates ([Template 1](#) and [Template 2](#)).

Adopt and implement written internal controls. Additionally, a local government must adopt and implement a written set of internal controls related to its financial transactions. The nature of these controls will vary based on the size of the unit and its staffing capacity, but there are some minimum requirements. A local government should generally conform its internal controls to those that apply to federal agencies through what is known as the federal "[Green Book](#)" or the [COSO framework](#). That does not mean that a local government must adopt all the specific controls that apply to federal agencies; rather, it should simply follow the same general framework for its own controls. The controls fall within five main categories. A local government's written internal controls identify specific actions/procedures within each of these categories. The five categories are:

1. **Control Environment.** Include provisions related to the role of the board in setting the tone for full compliance by all local government employees and officials and the board's commitment to integrity and ethics. Also include provisions related to how the board enforces accountability—periodic reporting, internal audits, audit committees, consequences for noncompliance, etc.
2. **Risk Assessments.** Include provisions about how the local government identifies and analyzes risk of fraud, mistake, or other misappropriation. Who performs this function? What is involved in risk assessments? How are they documented? How often are risk assessments performed? What changes impact risk?
3. **Control Activities.** Include provisions about activities that address potential risks. This section should include the specific controls that the local government has adopted, such as segregating duties for financial transactions, processes and oversight related to cash drawers, processes for receiving and reconciling revenues, rotating duties for financial transactions, controls over access to technology, cash management, deposits, and disbursement controls, etc. It should specify who performs what duties and who is responsible for supervision/oversight.
4. **Communication/Training.** Include provisions related to how personnel are informed and trained on appropriate controls and how any changes are communicated.
5. **Monitoring Activities.** Include provisions related to how the local government will monitor all financial activities to ensure proper compliance with controls and to ensure controls are effective. Who performs this function? How is it documented? This section should also detail what happens when deficiencies are detected and identify specific consequences for noncompliance.

The North Carolina Department of State Treasurer has a [helpful guide](#) on specific internal control considerations and processes for smaller units.

STEP 2: ADOPT AND IMPLEMENT GENERAL COMPLIANCE POLICIES

A local government must adopt and implement the following policies for all ARP/CSLFRF expenditures, including those in the revenue replacement category. I have included links to sample policies for each that a local government may use as templates.

Records Retention. This policy supplements a local government's regular records retention policy to establish procedures to retain all ARP/CSLFRF-related information for at least 5 years after all grant funds are expended or returned to US Treasury. ([Sample policy here.](#))

Eligible Use. This is a simple policy that indicates allowable and unallowable projects, based on the expenditure categories in the ARP/CSLFRF Final Rule. It requires a local government to identify staff to document and review ARP/CSLFRF expenditures. That documentation must be retained according to the record retention requirements. ([Sample policy here.](#))

Allowable Cost. This is policy requires a local government to perform a general review of each cost item to ensure it is allocable, reasonable, consistently treated, and properly documented. ([Sample policy here.](#)) *As noted above, the specific cost item regulations in the UG do not apply to revenue replacement expenditures. That section of the allowable cost policy will not be triggered for expenditures in this category.*

Civil Rights Compliance. This policy reaffirms the local government's commitment to compliance with federal civil rights laws and establishes processes for reporting potential violations and tracking complaints and resolutions. ([Sample policy here.](#))

Conflict of Interest. The UG requires recipients and subrecipients of federal financial assistance to maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. ([Sample policy here.](#))

STEP 3: IDENTIFY ELIGIBLE PROJECT

A local government may use revenue replacement ARP/CSLFRF for any purpose authorized by state law, except for the specific prohibited items listed above. Examples include paying salaries and benefits of local government employees, contracting with other local governments or nonprofits to provide community programs or services, purchasing real property, supplies, and equipment, and contracting for design, construction, repair, or renovation work. A local government should identify the purpose, scope, and estimated cost of the project. It then must identify state law authority and any state law process requirements. Finally, it must ensure the project is not on the prohibited list (detailed above). Recall that ARP/CSLFRF funds also may be used to reimburse a local government for a prior eligible project, as long as the costs were incurred on or after March 3, 2021.

STEP 4: DOCUMENT COMPLIANCE WITH REQUIRED POLICIES

The implementation of the UG policies related to a revenue replacement project/expenditure is straightforward. A local government must do the following:

Document eligibility determination and basic allowable cost review, according to procedures in these two policies: eligible use policy and allowable cost policy. This can be accomplished with this [Eligibility and Allowable Cost Documentation Template](#) or through a similar document created by the local government.

Determine and address any conflicts of interest, according to the local government's conflict of interest policy that incorporates both state and federal requirements. Note that internal expenditures on salaries and benefits will not trigger conflict of interest issues, but external agreements funded with revenue replacement funds might.

STEP 5: FOLLOW STATE LAW BUDGETING

ARP/CSLFRF funds must be properly budgeted before they can be obligated and expended. *See* G.S. 159-8. I recommend budgeting ARP/CSLFRF funds in a grant project ordinance, pursuant to G.S. 159-13.2. **Here** is a budget template and this **blog post** details different budgeting and accounting options for different types of revenue replacement expenditures.

STEP 6: ENTER INTO OBLIGATIONS AND MAKE DISBURSEMENTS

A local government must follow state law processes to incur obligations and make disbursements. An obligation happens when a local government makes a legal commitment to pay money to another. Examples include issuing POs to vendors, using a credit card or p-card to purchase goods or services, and executing a contract for services or construction. Before incurring an obligation, a local government must follow the preaudit process. *See* G.S. 159-28. Once the goods are delivered or services are performed, an expenditure occurs, and a local government performs a disbursement process before paying the invoice or bill. *Id.* As part of that disbursement process, finance staff must ensure that there is proper documentation of performance by the other party to the agreement and that the amounts requested are due and owing.

STEP 7: COMPLETE REQUIRED US TREASURY REPORTS

The ARP/CSLFRF requires a local government to complete periodic reports to US Treasury. Most local governments must complete a yearly Project and Expenditure Report. Some will complete this report quarterly and a few (the largest local governments) also will complete a yearly Recovery Plan Performance Report. A schedule of reporting requirements and deadlines is **here**. For local governments that expend all their ARP/CSLFRF funds in the revenue replacement category, completing the Project and Expenditure Report is easy. All revenue replacement expenditures may be reported as a single project with a brief narrative to outline the specifics.

STEP 8: RETAIN DOCUMENTATION ACCORDING TO ARP/CSLFRF-SPECIFIC RETENTION POLICY

A local government must retain all policies, budgets, contracts, documentation, and other records justifying its ARP/CSLFRF expenditures according to its ARP/CSLFRF-specific record retention policy. (Reminder that all documentation must be retained for at least five years after all grant funds are expended or returned to US Treasury.) For example, if a local government expends its revenue replacement funds on salaries and benefits, it must retain general financial records tracking the obligations and disbursements, payroll records, the grant project ordinance appropriation(s) and any amendments, special revenue fund records and any journal entries, the eligibility determination documentation, and the allowable cost review documentation for the required retention period. (Sample documentation form for both eligibility determination and allowable cost review **here**.)

STEP 9: PREPARE FOR AUDIT

All local governments are subject to a yearly independent financial audit, pursuant to G.S. 159-34. Expenditure of federal funds, though, may trigger greater audit scrutiny. As detailed in Rebecca Badgett's **post**, if a local government expends \$100,000 or more in combined state and federal funds in any fiscal year, it also triggers a Yellow Book audit. And if a local government expends \$750,000 or more of federal funds in any fiscal year, it also triggers a federal Single Audit, unless the local government qualifies for the alternative compliance engagement that applies to the ARP/CSLFRF program. If a local government triggers the Single Audit, it must follow UG procurement requirements (as detailed in Rebecca's post) to select and contract with its auditor. These requirements still apply even if all expenditures are from Revenue Replacement ARP/CSLFRF funds and even if the audit contract is paid for with Revenue Replacement funds or non-grant revenue sources.

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Revenue Replacement

A local government may expend Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) on a broad range of general government services under the Revenue Replacement allowable use category. There are two ways to proceed under this category: a unit may either elect to take the \$10 million Standard Allowance or it may calculate actual revenue loss according to U.S. Treasury's formula outlined in the Final Rule.

The Standard Allowance allows a local government to expend up to \$10 million of its CSLFRF funds in the Revenue Replacement category without having to demonstrate any actual lost revenue. US Treasury has stated that a local government must elect either the Standard Allowance or the Formula Approach for Revenue Replacement in the April 30, 2022 Project and Expenditure Report. This is a one-time election that cannot be changed.

Importantly, by electing the standard allowance and spending CSLFRF funds as revenue replacement does not convert CSLFRF funds into general revenue funds. The CSLFRF funds remain grant funds and must be expended in compliance with the grant award terms and conditions.

- **May a local government elect the Standard Allowance if it did not experience any revenue loss?** Yes; there is no requirement to prove a loss in revenue. Treasury will presume that each jurisdiction experienced up to \$10 million in lost revenue. If a local government received less than \$10 million in CSLFRF funds, it may take the Standard Allowance for the full amount it received. For example, if a local government received \$1.2 million, it may expend up to \$1.2 million as revenue replacement.
- **If a local government elects the Standard Allowance does it have to spend all of its CSLFRF funds in the Revenue Replacement category?** No. Electing the Standard Allowance just indicates the maximum amount a local government may spend in the Revenue Replacement category, but it does not require a local government to spend all, or even any, of its CSLFRF funds in the Revenue Replacement category.
- **Are CSLFRF funds expended under the Revenue Replacement category subject to the Uniform Guidance?** Likely, yes. As of 4/5/2022, Treasury has not exempted funds expended for general government services under the Revenue Replacement category from the Uniform Guidance. The safest bet is to assume the Uniform Guidance applies until Treasury says otherwise.
- **What are the benefits of expending CSLFRF on general government services in the Revenue Replacement category?** A general government service includes any service traditionally provided by government that a local government has state law authority to engage in, including public enterprise activities. Spending funds in the Revenue Replacement category allows a local government to undertake a wide array of potential expenditures, including within this covering the salaries and fringe benefits of local government employees; park improvement projects; purchasing equipment and supplies for local government operations; renovating public buildings and facilities; and many more. U.S. Treasury has also provided a list of general government services that a local government may presume are eligible uses of CSLFRF funds, including:
 - maintenance or pay-go funding building of infrastructure, including roads;
 - modernization of cybersecurity, including hardware, software, and protection of critical infrastructure;
 - health services; environmental remediation; school or educational services; and
 - the provision of police, fire, and other public safety services (e.g., purchasing a fire truck or police vehicles, purchasing other equipment, covering salaries of public safety personnel).
- **Is there a strategic way to expend CSLFRF funds (i.e., how do we make the best use of funds and trigger the fewest compliance requirements)?** A local government may choose to allocate CSLFRF funds to those projects and expenditures that will trigger the fewest Uniform Guidance compliance requirements, thereby limiting the administrative burden. For example, instead of purchasing new police vehicles, which would trigger

UG procurement and property management standards, a local government may opt to fund personnel salaries. In doing so, the unit will have freed up general fund revenue that would have otherwise been used to pay for salaries. This additional general fund revenue could then be expended on the purchase new police vehicles, which would only trigger state law procurement and property disposal requirements.

- **May CSLFRF funds be spent to cover employee salaries and fringe benefits?** 2 C.F.R. 200.430 & .431 authorize a local government to spend Federal grant funds to cover employee salaries and fringe benefits when certain conditions are met. Specifically, salary expenditures must be reasonable and fringe benefits are allowable only if a specific covered benefit is required by law or provided as part of an established policy. Allowable fringe benefits may include: covering leave during authorized absences (annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave); employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance; individual retirement account contributions, and similar benefits. Although the Uniform Guidance allows pension plan contributions, the terms and conditions of the ARP award expressly prohibit lump sum deposits into pension funds. Contributions to individual employee retirement accounts are allowable.
- **May Revenue Replacement CSLFRF funds be expended on capital improvement projects?** Yes, CSLFRF may be spent on capital improvement projects under the Revenue Replacement category, and no preapproval from Treasury is necessary to engage in a capital improvement project. Additionally, unlike capital expenditures within the Address COVID Public Health & Negative Economic Impact category, there is no requirement to provide written justification for capital improvement projects costing more than \$1 million.
- **May a unit combine CSLFRF with other revenue sources to fund a project?** Yes. Treasury allows the "blending and braiding" of funds to complete eligible projects. Recipients may undertake projects on their own using various revenue sources, pool funds with other recipients, or contract with a subrecipient to complete eligible projects. Importantly, CLFRF may not be used to fund debt services or cover borrowing costs. When completing a capital project, CLFRF can fund the cash portion of the project (the "pay-go" portion), but other revenue sources must fund any debt or borrowing costs.
- **May CSLFRF funds available under the Revenue Loss category be used to meet the non-federal match or cost-share required of other federal programs?** Yes, funds under the Revenue Loss category generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. CSLFRF funds may not be used as the nonfederal share for purposes of a state's Medicaid and CHIP programs. CSLFRF funds in the other eligible use categories may not be used to meet the non-federal match or cost-share requirements of other federal programs, unless specifically provided for by statute.



North Carolina Procurement Manual

NC★DOA
Department of Administration
Purchase & Contract

2022

Introduction

The North Carolina Department of Administration (NCDOA) serves as the business manager for the state of North Carolina. In this capacity, NCDOA oversees government operations such as building construction, procurement of non-IT goods and services, management of state vehicles, acquisition and disposal of real property, and operation services such as courier mail delivery and the sale of surplus property. Additionally, NCDOA oversees many of the state's advocacy programs, which advocate for and serve diverse segments of the state's population that have been traditionally underserved.

NCDOA's mission provides three imperatives that guide the department:

- 1) Explore new and improved ways to deliver effective and efficient services to create value for taxpayers.
- 2) Provide superior customer service.
- 3) Create a culture of trust through enhanced employee engagement, openness, and inclusiveness.

Located within NCDOA is the Division of Procurement & Contract (P&C), the state's central procurement authority. P&C oversees procurement for all state departments, institutions, agencies, universities, and community colleges. In support of NCDOA's mission, P&C is responsible for leading, implementing, and administering the strategy, policy, and practices for the procurement of non-IT goods and services associated with the state's operations.

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. While P&C is the central procurement authority for non-IT goods and services, there are two other defined procurement entities for the state. 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. Similarly, the NCDOA, State Construction Office (SCO) serves as the authority for procurement of all state construction projects.

P&C Mission and Vision

The mission of P&C is to provide for the effective and economical acquisition of goods and services for the state of North Carolina.

The vision of P&C is to be a trusted partner that delivers outstanding customer service, fosters collaborative relationships, and adds value through strategic actions, efficient processes, and innovative technology to be recognized as a world-class procurement operation.

As such, P&C is committed to being accountable for developing and maintaining competencies, to include knowledge, skills, and abilities, which establishes P&C as the center of excellence for subject matter experts in North Carolina procurement processes and practices. This commitment involves transitioning from traditional public procurement practices to the development and adoption of more innovative processes that promote

sound fiscal decision-making and encourage competition; thus ensuring that the public good has been served.

To achieve such an endeavor, P&C is organized into five sections that are closely integrated, to include:

- 1) **Procurement Education** – Provides training on procurement policy, methods, strategies, and skillsets to procurement professionals across the state
- 2) **Strategic Sourcing** – Performs the procurement function on behalf of P&C by assisting agencies with procurements that exceed their general delegations and managing Statewide Term Contracts (STCs)
- 3) **Contract Management (Legal)** – As the in-house legal department for P&C, assists procurement professionals with legal issues related to procurement, including contract interpretation and negotiation
- 4) **Compliance** – Reviews agency activities to ensure compliance with procurement policies, laws, and practices
- 5) **Systems Support** – Provides support for all related procurement systems and technologies for each above area

Each of the sections supports P&C in:

- Creation and management of procurement policies
- Providing guidance on procurement strategies
- Determination of appropriate procurement methods and strategies
- Ensuring compliance with the tenets of fair and open competition, with respect to ethical and transparent procurement
- Support the utilization and participation of Historically Underutilized Businesses (HUB)
- Facilitation of the solicitation process through contract award
- Creation and maintenance of procurement file best practices
- Administration of all STCs, including vendor performance, modifications, renewals, cancellations, and disputes
- Management of vendor relationships

Statutory Authority

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 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.

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 each agency involved 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.

P&C 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 P&C 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

North Carolina Procurement Manual

This procurement manual is based on the above concepts and best business practices. The intent of the manual is to support state entities in the administration of their efficient and effective internal procurement programs. While the North Carolina Procurement Manual is a state-led policy and process manual, it is important to note that each state agency, institution, community college, and university should maintain an individual agency procurement manual to set forth the policies and procedures governing their delegated authority for the procurement of goods and services.

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Section 1: Procurement Delegations and Thresholds

1.1 Delegations

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.

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). Universities have similar authority for purchases valued less than the university's bid value benchmark. Any transaction that exceeds an entity's general delegation or benchmark must be reviewed and approved by P&C unless it is otherwise exempted.

Contracts valued less than the agency's general delegation shall be the purchasing agency's responsibility. 01 NCAC 05B .0301. Agencies shall develop internal policies for purchases that are valued less than the general delegation, which shall comply with state law and the Administrative Code.

Each agency should designate one or more individuals to be responsible for the procurement functions of the agency. It is recommended that just one office have this responsibility, to ensure consistency and accountability for all expenditures.

Agencies shall not divide requirements into more than one procurement in order to keep the individual purchases under the general delegation amount, and thereby avoid certain rules and processes, including P&C oversight. 01 NCAC 05B .0315.

Agencies must ensure that they do not exceed their general delegation in handling any type of purchase. This includes monthly and quarterly (scheduled buying) purchases and agency specific term contracts, which may be established for items acquired by an agency on a repetitive basis. The cumulative contract value, including the original contract period and any renewals and extensions, must be used to determine whether a procurement is within the agency's general delegation.

Agencies should monitor purchases valued under their general delegation to guard against abuse of the system and to ensure that the dollar value received is commensurate with the dollar amount expended.

1.1.1 General Delegations

The State Purchasing Officer (SPO) is authorized by statute to set the general delegation for most state agencies. G.S. 143-53.1 and -53(a)(2). Agency delegation information is set forth in 01 NCAC 05B .0301.

The maximum authorized general delegations and benchmarks for goods and services are as follows:

- Agencies (excluding universities) are eligible for a maximum general delegation of \$100,000.
 - Agency general delegations may be increased or decreased by the SPO, as discussed below.
- Community college delegations are set by the State Board of Community Colleges, in consultation with the Department of Administration, and are capped at \$100,000 as provided in G.S. 115D-58.14.
- University benchmarks are as set by the University Board of Governors and are capped at \$500,000.
 - The university bid value benchmark is established pursuant to G.S. 116-31.10.

Although the purchasing benchmarks for universities are set by the University Board of Governors, those purchases are otherwise governed by state law and the Administrative Code. To help eliminate confusion, the term used to describe the authority to make purchases under an agency's delegation or a university's benchmark may be referred to as a "general delegation." The terms "benchmark" and "general delegation" are used interchangeably.

Agencies shall not independently award purchases that exceed their general delegation, whether based on the original contract amount or the contract amount as amended, without approval from P&C.

Agencies shall use solicitation templates provided by P&C for purchases that exceed their general delegation. Solicitation documents shall include the state's standard terms and conditions and other consistent contract language issued by the SPO. Invitation for Bid (IFB), Request for Quote (RFQ), and Request for Proposals (RFP) templates provided by P&C shall be used unless the SPO grants permission to modify the solicitation document language.

1.1.2 Increasing or Reducing the General Delegation

The SPO is authorized by statute to raise or lower an agency's general delegation after consideration of its overall capabilities, including staff resources, purchasing compliance reviews and risk assessment, established procurement plan and policies, Historically Underutilized Businesses (HUB) plan, bid protest history, and staff training and certifications of the individual agency. G.S. 143-53(a)(2).

P&C is authorized to conduct compliance reviews of an agency's procurement practices. Compliance reviews shall determine whether agencies are complying with North Carolina procurement laws and regulations and whether an agency's delegations should be adjusted. The SPO shall also conduct a compliance review whenever an agency requests a delegation increase in order to evaluate whether the increase is appropriate. 01 NCAC 05B.1605.

1.1.3 Special Delegations

Special delegations apply to categories of goods and services that are specifically exempted by the 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. 01 NCAC 05B.1603. Unless otherwise specified by the SPO, special delegations are subject to the following conditions and limitations:

- a) All goods and services covered by Statewide Term Contracts (STCs) must be purchased in accordance with the instructions of each contract.
- b) Competition must be solicited, where available. If competition is not available, the reason(s) must be documented in the procurement file.
- c) 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.
- d) All transactions shall be documented.
- e) Awarding of contracts pursuant to a special delegation shall be the responsibility of the agency's executive officer (agency head).
- f) Any controversial matter arising from a special delegation must be brought to the attention of the SPO.
- g) All bid protests on awards that exceed an agency's general delegation must be handled by the SPO.
- h) Specific delegations may be subject to additional conditions as determined by the SPO. These conditions shall be submitted to the agency in writing.
- i) All contracts expected to exceed \$1 million shall comply with the requirements of G.S. 143-50.1.
- j) P&C shall periodically review all approved special delegations to ascertain the continued suitability for delegation.

1.1.4 Exemptions

In addition to special delegations, certain agencies or classes of goods and services may be exempted from P&C involvement. A few notable categories of exemptions are discussed below.

1.1.4.1 Statutory Exemptions

Various agencies and governmental entities may have specific statutory authority that exempts them from P&C procurement statutes and rules. These statutory exemptions may encompass all of an entity's procurement activities or only specific types of purchases.

1.1.4.2 Exemptions - 01 NCAC 05B.1601

Rule 01 NCAC 05B. 1601(a) provides a list of goods and services that are not required to be purchased through P&C:

- a) Purchase of liquor
- b) Perishable articles such as fresh meats
 - i. However, 01 NCAC 05B.1601(c) provides that contracts for bakery products and dairy products shall be awarded through P&C if the purchase exceeds an agency's general delegation.
- c) Published books, manuscripts, subscriptions to printed material, packaged copyrighted software products, and like materials
- d) Services provided by individuals by direct employment contracts with the state
- e) Public utility services (gas, water, and electricity)
- f) Telephone and cable services furnished by those companies
- g) Services provided which are subject to published tariff rates as established by the N.C. Utilities Commission
- h) Services which are merely incidental to the purchase of supplies, materials, or equipment such as installation services
- i) Contracts for construction of and structural changes to public buildings
- j) Personal services provided by a professional individual on a temporary or occasional basis using their professional skills to perform a professional task. This includes consultants, doctors, dentists, attorneys, architects, engineers, scientists, performers of the fine arts, and similar professions.
 - i. NOTE: Although this language remains in the rule, G.S. 143-48.6 requires that these contracts be handled the same as other service contracts. This exemption is no longer valid.
- k) Services provided directly by an agency of the state, federal or local government, or its employees, when performing the service as a part of its normal governmental function

1.1.4.3 Other Exemptions - NCAC 05B .1601(b)

In addition to products and services exempted by statute, NCAC 05B .1601(b) provides that the SPO may exempt other products and services from purchase through P&C provided that the SPO finds both conditions below true:

- 6) Competition will not enhance the price that the state would receive for the product or service.
- 7) Competition will not enhance the quality of the product or service that the state would receive.

Currently, the following items are exempted from P&C pursuant to 01 NCAC 05B .1601(b):

- **Repairs (Non-Construction):** Using agencies are authorized to purchase minor repairs from the private sector, regardless of cost.
 - NOTE: Structural changes made to or in agency buildings shall be handled by the State Construction Office in accordance with the construction statutes and rules applicable to each agency. P&C does not handle these contracts unless otherwise specified.
- **Animals, Poultry, and Fish:** Using agencies are authorized to purchase animals, poultry, and fish.
- **Feed:** Using agencies are authorized to purchase feed, including special ingredients for animals, poultry, and fish.
- **Athletic Apparel:** Using agencies are authorized to purchase athletic apparel. Safety concerns for the athletes should remain within the using agency and its subject matter experts.
- **Aircraft Maintenance:** Using agencies are authorized to purchase aircraft maintenance and repair (see *Repairs (Non-Construction)*) whether unexpected or scheduled. This does not include the purchase of equipment, materials, or supplies for the aircraft that are separate and apart from the maintenance or repair being performed.
- **Playground Equipment (Structures):** Using agencies are authorized to purchase and install playground equipment when handled as a goods purchase versus a construction project.
- **Ready-Mix Concrete:** Using agencies are authorized to purchase ready-mix concrete for a good, not a construction project.

1.1.4.4 Across the Counter Purchases

The purchase of items for “across the counter” resale by an agency is not handled through P&C. 01 NCAC 05B .1508. However, such purchases, even if channeled through bookstores or other internal supply sources including stockrooms and warehouses, are to be made in accordance with state procurement rules, including:

- 1) Using State Term Contracts (STCs)

- 2) Seeking competition (if not purchased from an STC) when the solicitation is expected to exceed \$25,000, including utilizing the P&C solicitation documents and the state's standard terms and conditions
- 3) Advertising the solicitation on the P&C's electronic bid system when the solicitation exceeds the general delegation or bid value benchmark
- 4) Waiver of competition documentation, if competition is not sought

1.2 Procurement Thresholds

There are three procurement thresholds:

- small purchase
- informal
- formal

The differences between these and the conditions under which they control are explained herein. The categories provide dollar thresholds that govern agency procurement authority and the methods required to procure goods and services.

1.2.1 Small Purchases

Small purchases are those that are valued at \$25,000 or less, including the amount of any extensions or renewals. Small purchases are addressed in 01 NCAC 05B .0301 and are subject to the following rules:

- STCs 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.
 - The P&C contract administrator for the STC should be consulted by the using agency when a special type of good or service not already included on the STC is needed.
- Agencies may post small purchase solicitations on P&C's electronic bid system and may use solicitation templates provided by P&C. Agencies may also use NC eProcurement's collaborative requisitioning function in order to seek vendor quotes. Neither of these systems is required for small purchases.
- Agencies 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.

Agencies should follow their internal policies for small purchases, which may include soliciting at least three competitive quotes or bids. Additionally, agencies should develop initiatives to encourage and promote the use of HUB vendors. Agency executive officers shall develop written procedures for the administration of small purchases. Agencies shall provide these procedures to the SPO upon request.

1.2.2 Informal Purchases

Informal purchases are those that are valued between the small purchase benchmark of \$25,000 and the agency's general delegation or university's bid value benchmark, including the amount of any extensions or renewals. 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.
 - The P&C contract administrator for the STC should be consulted by the using agency when a special type of good or service not already included on the STC is needed.
- Informal purchases must contain the state's standard terms and conditions. To accomplish this, agencies have several options to pursue solicitation requests to vendors:
 - Utilize the NC eProcurement system to post informal purchase solicitations.
 - Utilize the NC eProcurement system's collaborative requisitioning function.
 - Issue a Request for Quote (RFQ) directly to at least three vendors.

Solicitations resulting in award of a contract shall be reviewed, approved, and executed by the approving agency, as documented in their procurement policy.

Agencies shall solicit at least three competitive quotes or bids. Additionally, agencies should develop initiatives to encourage and promote the use of HUB vendors. Agency executive officers shall develop written procedures for the administration of informal purchases. Agencies shall provide these procedures to the SPO upon request.

1.2.3 Formal Purchases

Formal purchases are those that are valued above the agency's general delegation, including the amount of any renewals or extensions. 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.
 - P&C contract administrator for the STC should be consulted by the using agency when a special type of good or service not already included on the STC is needed.
- Procurements that exceed an agency's general delegation are required to have P&C review and approval prior to posting and prior to awarding the contract.
 - Solicitations that require reviews and approvals will be processed through NC eProcurement or through the Procurement Information Portal (PIP) for

waivers of competition and non-users of NC eProcurement.

- Formal purchases must contain the state's terms and conditions. To accomplish this, agencies have limited options to advertise solicitations to vendors:
 - **NC eProcurement System, Ariba Sourcing Module** - Post formal purchase solicitations on the NC eProcurement sourcing system using an IFB or RFP state document.
 - **Interactive Purchasing System (IPS)** - Post formal solicitations in the IPS using an IFB or RFP. This option is only available for non-Ariba Sourcing users.
 - **Request for Quote (RFQ)** - Issue an RFQ document directly to one or more vendors. This option is only available for approved Waivers of Competition.

Solicitations resulting in award of a contract shall be reviewed and approved by P&C prior to the agency or university executing the contract. Agencies should develop initiatives to encourage and promote the use of HUB vendors.

1.2.4 Determining 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.

1.2.5 Contract Term

The contract term, or length, shall not be for more than three years, including all extensions and renewals, without the prior approval of the SPO or its designee. The determination will be based on whether the longer period would be advantageous to the state.

All requests for extended contract terms must be submitted for approval. Requests must be approved prior to posting.

1.3 Identifying the Need (Goods and Services)

The purchasing agency or university procurement office shall be responsible for developing internal policies to identify and define the entity's procurement needs. 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.

Identifying needs should result in a documented business justification to procure the goods and services.

1.3.1 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. 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 Service Contracts

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.

1.3.2.1 General Service Contracts

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 (by way of illustration, not limitation) 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.

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. The purchase of the commodity would be handled by the agency if valued less than their delegation or by P&C if valued more than their delegation. 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.

1.3.2.2 Professional Service Contracts

Professional Services is 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 (by way of illustration, not limitation), 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.

1.3.2.3 Consultant Service Contracts

Consultants provide analysis or advice in formulating or implementing improvements in programs or services. These contracts require a unique approval process set forth in 01 NCAC 05D.

Agencies requesting consultant services shall submit a letter of endorsement by the agency secretary and a written justification to P&C. 01 NCAC 05D .0203. At a minimum, this justification shall contain:

- 1) What services the agency desires to secure
- 2) Why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency
- 3) How the work to be performed relates to the proper functions of the agency
- 4) What benefits the agency expects to receive from the consultant's services
- 5) What the agency estimates to be the cost of the services sought

- 6) What potential sources of consultant services, if any, the agency has identified
- 7) A letter of endorsement for the proposed contract from the agency head or designee

If the agency is requesting authority 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. P&C and the governor's office shall approve outside consultants prior to contract solicitation and again prior to contract award.

All requests for consultant contracts must be submitted for approval. Approval must be received prior to posting.

1.3.2.3.1 Review of Agency Requests

The documents submitted by agencies requesting authority to retain consultants will be reviewed by P&C. 01 NCAC 05D .0204. Upon completion of this review, the requesting agency will be advised, subject to such conditions as may be prescribed by the governor or designee, to:

- 1) Canvass additional sources within state government
- 2) Solicit proposals from a private contractor
- 3) Sign negotiated contracts without competitive proposals if P&C and the governor 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 agency responsibilities or for having no financial benefit to the state relative to the potential expenditure of funds.

1.3.2.3.2 Contracting for Consultant Services

Competitive Proposals: Agencies which receive approval to solicit proposals for consultant services shall:

- 1) Prepare the appropriate solicitation document in accordance with the rules and disseminate among prospective service providers
- 2) Circulate the solicitation document to sources of consultant services as may be identified by P&C, as well as the sources identified by the requesting agency
- 3) Publicly open all proposals received
- 4) Forward the award recommendation and supporting documentation to P&C for review
 - a) After P&C's review, the recommendation shall be forwarded to the governor's office for approval. The requesting agency shall be notified in writing by the governor's office that either:

- i. The agency head is authorized to execute contracts with one or more approved service providers
- ii. All proposals have been rejected

01 NCAC 05D .0205.

1.3.2.3.3 Negotiated Consultant Contracts

Agencies receiving authorization to enter negotiated contracts for consultant services without soliciting competitive proposals shall submit the proposed contracts to P&C for review and approval prior to executing the contract, utilizing the same process as a waiver of competition. 01 NCAC 05D .0204(3) and .0206.

Upon completion of this review, the requesting agency shall be notified in writing by the governor's office that the approved contract(s) may be executed by the agency head.

Section 2: Procurement Methods and Considerations

2.1 Procurement Methods

Once a need is determined by a user at an agency, the user will submit a requisition through the agency's purchasing office. Acquisition methods usually fall within one of the subsections below.

2.1.1 Procurement Expenditures

The appropriate procurement method is determined by the dollar value of the procurement. When the dollar amount of an expenditure is less than an agency's general delegation the procurement is handled independently by the agency in accordance with its established procurement policy.

When the dollar amount of an expenditure exceeds the agency's general delegation, P&C must review and approve the solicitation prior to posting and again prior to award. This is true for all goods and services procurements, unless the purchase is covered by an existing STC, purchasing preference, statutory exemption, special delegation, or other exemption.

2.1.1.1 Small Purchases

A small purchase is defined as the purchase of goods or services, not covered by a term contract, involving an expenditure of public funds valued at \$25,000 or less. Because small purchases are typically less than an agency's general delegation, they can be made by agencies directly, without P&C involvement. The agency's executive officer shall set forth procedures for making small purchases.

An agency's executive officer may set an internal benchmark for small purchases that is less than \$25,000, but small purchases shall not exceed \$25,000. The awarding of contracts for small purchases shall be the responsibility of the purchasing agency. The SPO may require that a copy of the small purchase procedures be sent to P&C. The use of competitive quotes or bids is preferred, whenever practical.

2.1.2 Procurement Card (P-Card)

Procurement cards (P-Cards) are for official use only and shall be used in accordance with the guidelines established in the STCs maintained by P&C. All other procurement rules and policies also apply to P-Card purchases. Agency use of P-Cards is contingent upon satisfactory compliance reviews, as determined by P&C.

Transaction limits for state agencies and state departments

Each transaction on a P-Card is not to exceed \$5,000 for general purchases and \$25,000 for travel purchases. Agencies may set lower internal limits for all purchases or specific types of purchases. 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.

Transaction limits for other eligible entities

Other eligible entities may set limits for all purchases or specific types of purchases. 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. Other eligible entities should develop a P-Card manual specific to their organization and monitor card usage on a regular basis to ensure cards are being used appropriately.

Per-transaction limits of P-Card purchases may be changed only pursuant to the following circumstances:

- a) Agency card program administrators may request higher limits on cards in emergency situations, per governor declaration. 01 NCAC 05B .1602. Such increases shall be in effect no longer than the duration of the emergency. Requests for increased limits shall be made through P&C if time permits and shall be reported to P&C in any case.
- b) Agencies may apply to the SPO for higher limits on specific transactions or types of transactions, with prior justification.
- c) The SPO may adjust limits based on analysis of the P-Card program's results, on a statewide or agency basis, after taking into consideration current market trends, the economy, and recommendations received from the state controller and the state auditor.

Participating agencies shall designate a P-Card program administrator, who shall be the chief purchasing officer or chief fiscal officer (or their designee).

- a) All cards requested on behalf of agencies shall be sent to the program administrator (not to individual cardholders) by a traceable delivery method.
- b) All cards shall show the agency name, an individual cardholder's name, the state seal, or agency logo, and indicate they are for official use only.
- c) The individual cardholder named on a card shall be responsible for its possession and use. 01 NCAC 05B .1523.

For a Procurement Card Single Transaction Limit Increase Request, please visit the Procurement Information Portal (PIP) and submit the appropriate form. Contact the STC administrator for questions about P-Card usage.

2.1.3 Open Market Solicitations

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. Competition shall be reasonable and adequate for the amount of the expenditure and the specific requirement. Rule 01 NCAC 05B .0301 sets out the requirements for formal and informal solicitations.

2.1.4 Statewide Term Contracts

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."

Statewide Term Contracts (STCs) 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. During the process of establishing STCs, P&C considers several factors, which 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

01 NCAC 05B .1102.

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 in accordance with the established priority from above and with instructions for that contract. 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 forwarded to P&C for processing.

In situations where a special item or service is needed for a particular application, the state purchasing administrator who administers the STC should be consulted for appropriate action.

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.

2.1.4.1 Mandatory versus Convenience

Mandatory STCs

Mandatory STCs shall be used by state agencies, departments, institutions, universities, and community colleges, unless exempted by statute or rule. Other entities, including schools and local government, may use these contracts, as provided in the contract. 01 NCAC 05B .1101; G.S. 143-49.

Convenience STCs

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. G.S. 143-49.6.

2.1.4.2 Abnormal Quantity

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

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

2.1.5 Agency Specific Term Contract

An agency specific term contract is a "requirements contract" or "indefinite quantity contract" established for use by a specific agency when the needed goods or services are not otherwise covered by an STC.

Agency specific term contracts are established by the purchasing agency. They shall be reviewed and approved by P&C when the expected expenditures exceed the agency's general delegation.

2.1.6 Waiver of Competition

Competition may be waived for a solicitation pursuant to the specific conditions listed in 01 NCAC 05B .1401. Competition may also be waived if deemed to be in the public interest by the SPO or by the agency if the expenditure is valued less than the agency's general delegation.

Those situations in which a waiver is appropriate are listed below and shall be documented with a signed and dated request from the agency and a signed and dated approval from the SPO or agency Procurement Chief, depending on whether the request exceeds the agency's general delegation.

When seeking a waiver, the request shall identify those specific facts or circumstances that support a waiver; simply repeating the language of the applicable category is not sufficient. A clear justification should include information around the applicable waiver condition with supporting evidence of why the waiver applies to the specific procurement endeavor, indicating the business purpose of the good/service, who will use the good/service, and options for not obtaining the specific waiver. A waiver should also be supported by any manufacturer documentation and market research.

Example:

An agency requests to purchase Brand X spectrometers from Vendor Y.

Unacceptable justification:

Vendor Y is the only available source of supply for Brand X.

Acceptable justification: An agency lab performs critical analyses for the presence of minute amounts of certain chemicals, and the instruments used shall be precise and well-calibrated. To give predictable results across samples, the lab has standardized Brand X spectrometers with seven currently in use at its facility. Brand X warrants the accuracy of its equipment only if it is sold and serviced by an authorized dealer. Vendor Y is the only vendor authorized to provide service in North America. Attached is the authorized dealer letter from the manufacturer to support the justification.

2.1.6.1 Waiver of Competition Conditions

Pursuant to the Administrative Code, agencies may waive competition where:

- 1) Performance or price competition is not available
- 2) A needed product or service is available from only one source of supply
- 3) Emergency action is indicated
- 4) Competition has been solicited but no satisfactory offers received
- 5) Standardization or compatibility is the overriding consideration
- 6) A donation predicates the source of supply
- 7) Personal or particular professional services are required
- 8) A particular medical product or service, or prosthetic appliance is needed
- 9) A good or service is needed for the blind or severely disabled and there are overriding considerations for its use
- 10) Additional products or services are needed to complete an ongoing job or task
- 11) Products are bought for "over the counter" resale
- 12) A particular product or service is desired for educational, training, experimental, developmental or research work
- 13) Equipment is already installed, connected and in service, and it is determined advantageous to purchase it
- 14) Goods are subject to rapid price fluctuation or immediate acceptance

- 15) There is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies which thwarts normal competitive procedures
- 16) The amount of the purchase is too small to justify soliciting competition or a purchase is being made and a satisfactory price is available from a previous contract
- 17) The requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s)
- 18) Used good(s) is available on short notice and subject to prior sale

Depending on dollar value, competition may also be waived by the SPO or the agency if a waiver is deemed to be in the public interest. 01 NCAC 05B .1401.

2.1.7 Brand Specific Requests

Brand specific rationale can be used only when the requirement can be met by the exact specifications offered by a particular piece of equipment made by the manufacturer. A brand specific justification must explain why the product is singularly able to meet the requirements of the user and most conclusively support the determination that no other product can fulfill the user's needs. Common examples include standardization and compatibility with existing equipment/systems or where a specific product is required to complete an ongoing task.

2.1.8 Emergency Purchases

An emergency is a situation that endangers lives, property, or causes the immediate discontinuation of a vital program such as those essential for health and safety and which can be rectified only by immediate on-the-spot purchase (or rental) of goods or services. 01 NCAC 05B .1602.

In an emergency, agencies should negotiate with potential vendors in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer shall be issued, including standard terms and conditions, unless circumstances prohibit their use.

When an emergency action is necessary and the expenditure exceeds the agency's general delegation, prior verbal approval should be obtained from P&C, if time permits.

Subsequently, whether or not prior approval was possible, an explanation of the emergency purchase shall be reported in writing to P&C if the expenditure is over the agency's general delegation. If under the agency's general delegation, documentation shall be included in the agency's procurement file.

2.1.9 Pressing Need

A pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work. Lack of reasonable forethought or planning is not justification for a pressing need. G.S. 143-57 and 01 NCAC 05B .1602.

When pressing need action is necessary, and the expenditure is over the agency's benchmark or general delegation, prior verbal approval shall be obtained from P&C, if time permits. Circumstances demonstrating the pressing need must be described in the request. Subsequently, whether or not such prior approval was possible, if the expenditure is over the agency's delegation, an explanation of the pressing need purchase shall be reported in writing to P&C. If under the agency's delegation, documentation shall be included in the agency's procurement file.

Agencies should negotiate with potential vendors in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer shall be issued, including standard language, and terms and conditions issued by P&C, unless circumstances prohibit their use.

2.2 Grant Funded Contracts

2.2.1 Conditional Grants

Where a grant, donation, or special discount is predicated upon making a purchase from the grantor, the proposed transaction shall be explained in writing and shall have prior approval of the SPO. 01 NCAC 05B .1506. Prior to approval, the SPO shall consider the conditions placed on the grant, donation, or special discount, and how they will affect the agency and the state, the cost of agreeing to such conditions, and the market conditions.

When a donation from a private source is predicated upon making the purchase or lease from a specific source, the purchase or lease may be made without prior approval of the SPO or Secretary. This only applies if the donation from the private source covers 100% of the purchase price.

2.2.2 Federal Grants

A federal grant is an award of financial assistance, the principal purpose of which is to transfer a thing of value from a federal agency to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States. A grant is distinguished from a contract, which is used to acquire property or services for the federal government's direct benefit or use. When the government is procuring goods or services for its own direct benefit, and not for a broader public purpose, the law requires use of a federal contract.

If an agency receives grant money to pay for a contract, the agency must consider the nature of the relationship with the contractor. Is the relationship a vendor relationship or a sub-recipient relationship? Sub-recipient is defined as a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency.

Vendor is defined as a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program.

If the relationship is that of a sub-recipient, then federal guidelines and cost principles must be followed. Federal grants have specific compliance requirements which are outlined in

the "Audits of States, Local Governments and Nonprofit Organizations" provided by the United States Office of Management and Budget. Agencies are encouraged to ask federal agencies administering the particular grant programs to identify essential and mandatory clauses that should be used in the state's sub-recipient agreements. It should be noted that state agencies distributing grant funds have an obligation to ensure that sub-recipients adequately perform all agreed-upon services.

Sub-Recipient	Vendor
Sub-recipients are non-federal entities expending federal awards from pass-through entities performing federal programs. Federal agencies may award sub-recipients directly, but not beneficiaries of such programs.	Vendors are prime and/or independent contractors, suppliers, bidders, companies, firms, corporations, partnerships, individuals, or other entities responding to solicitations.

2.3 Purchasing Preferences

There are a number of purchasing preferences that should be considered prior to issuing a solicitation.



2.3.1 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. 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 requirement also applies to all community colleges. 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.

2.3.2 Nonprofit Work Centers for the Blind and Severly 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, state entities must determine whether those items can be supplied pursuant to the STC established with the nonprofit work centers for the blind and severely disabled.

2.4 Other Considerations

2.4.1 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. 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.

2.4.2 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 and the dollar amount is under the agency's general delegation, the executive officer of the agency may authorize purchase through auction. Auction purchases must otherwise follow procurement rules and processes.

If the dollar expenditure is over the agency's general delegation, then prior approval to participate in the auction must be obtained from the SPO, unless it is for an emergency or a pressing need purchase. Those purchases would then be governed by the rules applying to Emergencies and Pressing Needs, as discussed above.

2.4.3 Reverse Auctions

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. Agencies 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.

2.4.4 Cooperative Purchasing

Where an agency 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. 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 the SPO permits one of the following alternative acquisition methods:

- 1) by making the acquisition on behalf of such governmental activity or charitable non-profit organization
- 2) by authorizing acquisition on the state's behalf under the provisions of G.S. 143.8
- 3) 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 SPO 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.

Section 3: General Procurement Planning and Guidelines

3.1 Preparing the Written Solicitation

The solicitation documents are mechanisms through which agencies 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 into an official procurement file. 01 NCAC 05B .1903.

3.1.1 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. All solicitations valued more than the small purchase of \$25,000 shall contain the North Carolina General Terms and Conditions.

In certain instances, the standard terms and conditions may be modified. Modifications to terms and conditions shall be approved by:

- The agency's legal counsel for contracts valued less than an agency's general delegation
- P&C's Contract Management Section (CMS) for contracts valued more than an agency's general delegation
 - Some entities are exempt from CMS review. Most notably, universities rely on their general counsel for review and approval of contracts. G.S. 114-8.3(b).

3.1.2 Pre-Bid/Pre-Proposal Conferences or Site Visits

When necessary, agencies 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, agencies 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
 - Urged and cautioned (optional)
- Any conference or site visit requirements should be included in the solicitation document.
- At the conference or site visit, a sign-in roster should be provided.
 - 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.
 - Late-comers may attend but shall not sign the attendance roster.
 - This is mostly relevant to mandatory conferences.
 - 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.
- Addenda shall be issued to address vendor questions and any agency modifications to the solicitation resulting from the site visit.
- If adverse circumstances dictate, virtual conferences may be utilized. Agencies should ensure that accurate attendance is kept for the virtual conference. For 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.

3.1.3 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 the agency'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.

3.1.4 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.

3.1.5 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 agency 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.

3.1.5.1 Generic (Performance and Design)

Buyers should analyze incoming requirements with a view towards soliciting the requirement on a generic specification basis. Generic specifications may be:

- a) Performance specifications, which set forth the performance requirements
- b) Design specifications, which set forth the essential characteristics of the items solicited

3.1.5.2 Brand Name or Functional Equivalent

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 the state, 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.

3.1.5.3 Brand Specific

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 piece of equipment made by the manufacturer.

Use of a brand specific specification must be approved in advance based on a written justification. Approval from P&C is required if the solicitation is expected to exceed the agency's general delegation. The agency must internally approve the justification if the procurement is valued less than the agency's general delegation. The 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; 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. Agencies should use caution when developing specifications in order to minimize the possibility of a bid protest.

3.1.6 Contract Pricing Structures

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

3.1.6.1 Fixed Price Contracts

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 the purchasing agency 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.

3.1.6.2 Fixed Price with Escalation or De-Escalation

This type of fixed price agreement 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 the buyer. 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 the state prior to its effectiveness.

3.1.6.3 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 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.

3.1.6.4 Time and Materials (T&M)

Time and materials 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. Whenever an agency 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, agencies 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. G.S. 143-52(c).

3.1.6.5 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.

3.1.6.5 Cost Plus Percentage of Cost Contracts

Cost plus percentage of cost contracts are typically 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. G.S.143-52(c).

3.1.7 Commodity Codes

The state utilizes the United Nations Standard Products and Services Code (UNSPSC), the global standard of commodity and service codes.

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 spend 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. Use of correct commodity codes is also a factor considered in compliance reviews.

Agencies 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.

NOTE: The IPS's six-digit commodity codes are derived from UNSPSC's eight-digit system. If you cannot find the desired commodity code in the IPS, search UNSPSC and use the first six digits of that result.

3.1.8 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.

Using agencies are responsible for all payments to the contracted vendor. Solicitation payment terms shall comply with policies established by the Office of State Controller.

3.1.9 Evaluation Criteria

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.

3.1.9.1 Lowest Cost 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. The solicitation shall provide the specifications that establish technical acceptability.

- 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.

3.1.9.2 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. Best Value is determined by evaluating which vendor response provides the best trade-off between price and performance. 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.
- 4) 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.
- 5) 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).
- 6) 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 bids
- 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

3.1.10 Transportation/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 the state 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, agencies 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 from the agency. Agencies 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 - 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, the agency 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.

3.1.11 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 the state (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 the:
 - 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.

3.1.12 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 the agency's facility free of

charge to the state. Demonstration results shall be documented in the file and be considered in the evaluation.

3.2 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).

3.2.1 North Carolina 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 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.

3.2.2 HUB Encouragement and 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. While this is limited to cabinet agencies, all departments, institutions, and agencies of the state should support this initiative.

It therefore becomes 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 an agency's general delegation or bid value benchmark. These procurements often fall under the small purchase and informal procurement processes which provide greater procurement flexibility.

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 solicitations valued above an agency's general delegation, HUB participation information shall be incorporated into the solicitation, and the agencies procurement office should work closely with the HUB Office to partner in initiatives.

3.3 Procurement Request Process

Solicitations that are expected to exceed an agency's general delegation must be reviewed by P&C. There are two required review and approval processes for each solicitation, one prior to posting and one prior to award.

Prior to posting, a completed draft solicitation must be provided, to P&C for review. The submission of the review should follow the appropriate process based on use of NC eProcurement or the Procurement Information Portal (PIP) for non-Ariba agencies. The Preliminary Review Checklist should accompany the request and can be found in the NC eProcurement system or the PIP.

Verbal requests to P&C for approval to move forward with a solicitation are not acceptable substitutes for written requests, except for emergency or pressing need procurements, which require that written notification from the agency be sent to P&C following the procurement. 01 NCAC 05B .1602.

The assigned P&C Strategic Sourcing Team will review the solicitation request and determine the appropriate action for a solicitation based on the content of the procurement request. Communication from the Strategic Sourcing Team will be provided with either approval of the request, the need for further feedback or collaboration that is required for approval, or denial of the request with feedback explaining the reasoning and appropriate next steps.

3.4 Control Numbers

In addition to any unique identifier given to a procurement by the purchasing agency, procurements handled by P&C may be assigned a unique control number, which remains with the procurement file. The control number will be provided to the purchasing agency for reference.

3.5 Spend Analysis

Spend analysis is the process of collecting, cleansing, classifying, and evaluating procurement data to reduce procurement costs, improve efficiency, and monitor compliance. It can also be leveraged in other areas such as goods management, strategic sourcing, and other business domains including inventory management, budgeting, planning, and product development.

There are several benefits to performing spend analysis:

- More precise financial and annual reports
- Find opportunities to cut costs
- To create accurate, spend forecasts
- To spot unacceptable spending
- To manage risk and diversify vendors
- Improve strategic sourcing decisions
- Improve supply management

Spend Analysis helps to answer the following questions:

- With whom am I spending funds?
- Am I getting what I paid for?
- Is this purchase necessary?
- What am I really spending? Are there hidden costs?

Core Areas of Spend Analysis	Explanation
Visibility	<ul style="list-style-type: none"> • Visibility refers to the ability of an organization to have a comprehensive view of the metrics that drive improved cost savings, process efficiency and supply-chain performance. • Spend visibility facilitates analyzing past spend that can be utilized for planning future expenditures. • Spend visibility goes beyond tracking spending as it gives both a detailed and holistic picture of how money is moving through an agency. • Spend visibility allows agencies to stay within budget by providing a real-time count of how much of their budget has already been spent.
Analysis	<ul style="list-style-type: none"> • Data should be analyzed to identify opportunities for cost savings and other procurement improvements. • Analysis allows agencies to ensure they have negotiated the best contract deals per supplier and to identify opportunities for modifying the number of suppliers per category or for negotiating better rates.
Process	<ul style="list-style-type: none"> • Process data shows areas for possible process improvements. • It provides information on the number of expected solicitations and provides for the identification of areas for process optimization. • This allows agencies to respond to solicitation development needs, identify vendors who routinely provide small purchases, and identify opportunities for streamlining purchasing processes.

Section 4: Procurement of Goods and Services

4.1 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, purchasers should:

- Seek competitive offers from qualified and responsible supply sources, unless exempted by statute or rule
- Develop specifications that are designed to reasonably satisfy the agency'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.
 - NOTE: 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.
01 NCAC 05A .0112(29) and (37).
- Encourage competition in the open market, resulting in the best possible contract for the needed goods or services

4.2 Information Gathering Before Preparing a Solicitation

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.

Agencies are not required to use this information in developing future solicitations but may find vendor responses useful in that regard. When using RFI responses to develop solicitations, agencies 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.

Request for Information (RFI)

- 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
 - Response expectations

4.3 Determining the Appropriate Solicitation Document

When developing a solicitation, it is critical to determine the appropriate procurement method because it will be a major factor in the planning process. For example, the average procurement lead time for an Invitation for Bid (IFB) can differ significantly from a Request for Proposals (RFP). The decision to issue an IFB or RFP depends on whether the goods or services required are clearly defined by the purchasing agency or whether the agency is looking to the vendor to propose a solution.

Invitation for Bid (IFB) - The IFB is a formal, written solicitation document used for seeking competition and obtaining offers for easily defined goods and simple services. This document contains the specifications, instructions to vendors, standard terms and conditions, and any additional information the vendor may need to provide a bid response. This document is typically used for open market bids, agency specific term contracts, and Statewide Term Contracts (STCs). An IFB is typically used with a "lowest price that meets the specifications" evaluation where cost is the most relevant factor, and an in-depth "Best Value" analysis is not needed. IFBs are required to be posted in the NC eProcurement system in order to solicit vendor responses.

In general, an IFB's timeline is four to six weeks, depending on complexity. Agencies should allow for the time needed for review and approval by P&C.

Request for Proposals (RFP) - The RFP is a formal, written solicitation document used for seeking competition and obtaining offers for a solution-based proposal for goods and services, rather than just looking for pricing, as found in an IFB solicitation. This document contains a defined scope of work, instructions to vendors, standard terms and conditions and any additional information the vendor may need to provide a proposal response. The RFP should be used when the agency is relying on the vendor to propose a solution that will meet the agency's needs and where price is not the only determining factor for award. This document is typically used for open market bids, agency specific term contracts and STCs. An RFP is typically used with a Best Value trade-off evaluation and must identify the

evaluation criteria on which the evaluation will be based. RFPs are required to be posted to the NC eProcurement system in order to solicit vendor responses.

In general, an RFP's timeline can be six to twelve weeks, depending on its complexity. Often this timeline can be extended for various reasons (i.e., complex questions and negotiations). Agencies should manage the timeline of expected award to allow for required reviews by P&C.

Request for Quote (RFQ) - The RFQ is used for non-advertised procurements. This document contains instructions for vendors, specifications, and terms and conditions. The RFQ may be used to solicit vendor responses pursuant to a waiver of competition, or it may be used for informal purchases that are valued at less than an agency's general delegation. An RFQ cannot be used as the basis for award when competitive bidding is required, such as for formal purchases that exceed an agency's general delegation. RFQs are issued to the intended vendors, using email, for response.

In general, an RFQ's timeline is flexible since there is no required posting or response time. Timelines within RFQs should account for the complexity of the request. Agencies should manage the timeline of expected award to allow for required reviews by P&C.

4.4 Determining the Appropriate Solicitation Method

In addition to determining the correct solicitation document for a specific procurement, it is essential to identify the process by which a procurement should be managed. This is based on the procurement's estimated cumulative contract value.

There are three thresholds for determining the solicitation method:

- 1) **Small Purchases** - valued less than the small purchase threshold
- 2) **Informal Purchases** - valued between the small purchase threshold and an agency's general delegation
- 3) **Formal Purchases** - valued in excess of an agency's general delegation

The characteristics of each are discussed below. These processes may vary where the procurement is the subject of a waiver of competition or falls under a special delegation, exemption, emergency, or pressing need.

Purchasing agencies should also determine whether the goods or services sought are available from Correction Enterprises or from a nonprofit work center for the blind and severely disabled.

NOTE: Legal Review of Contracts Valued Over \$1 Million

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, unless otherwise exempted by statute. Legal counsel should be included in the solicitation preparation process as early as possible to prevent delays.

4.4.1 Small Purchases - \$25,000 or Less

A small purchase is a solicitation for goods or services, not covered by a term contract, involving an expenditure of public funds valued at \$25,000 or less, including all extensions and renewals. 01 NCAC 05B .0301. Competitive bids are not required for small purchases; however, purchasers can still seek multiple quotes.

P&C's review and approval is not needed for these small dollar purchases; thus, purchasing agencies shall create their own policies and procedures for internal use.

The examples below are the most common methods used for small dollar purchases:

- Vendor quotes (should contain vendor logo, contact information, item or service description, quoted prices, delivery terms, F.O.B. point, and date of quote)
- Written informal quotes (Fax, phone, or email quotes)
 - If seeking phone quotes, keep a record of:
 - Item or service description
 - Quoted prices
 - Delivery terms
 - F.O.B. point
 - Contact name
 - Date of quote
- Collaborative requisitioning in Ariba
- Request for Quote (RFQ)

For all small purchases, the purchaser should ensure delivery and freight is included in the total cost. Verbal quotes should be confirmed in writing. P-Cards may be used to pay for small purchases, in accordance with purchasing agency policies.

If the vendor's quoted price is not fair and reasonable based on the estimated cost, seek competition from at least one additional vendor. Extensive research is not necessary.

Orders should be placed through the eProcurement release of a purchase order to the vendor, unless otherwise exempted. Purchase order numbers are automatically assigned in the system.

4.4.2 Informal Purchases

Where the cumulative value of a procurement, including all extensions and renewals, is valued between the small purchase benchmark of \$25,000 and an agency's general delegation, and the subject matter is not otherwise covered by an STC, the purchasing agency shall comply with the following procedures, unless otherwise exempted:

- Solicit competition, but sealed bidding is not required. This is often referred to as "three quotes and a buy."

- Issue solicitation documents to request or invite offers that include standard language, including the North Carolina General Terms and Conditions issued by P&C. The methods used for informal purchases include:
 - Collaborative Requisitioning
 - Informal Quote Request (IQR)
 - Request for Quote (RFQ)
- Handle all vendor negotiations, including those related to the contract terms and conditions.
 - Any modifications to the terms and conditions should be reviewed by agency counsel and may not conflict with P&C's North Carolina General Terms and Conditions.
- Review offers received and award contracts without P&C involvement.
- Hear bid protests or other vendor challenges to an award.

01 NCAC 05B .0301.

Additionally, RFPs or IFBs may be used for informal purchases. Agencies, community colleges, and universities may advertise these solicitations on the NC eProcurement system.

4.4.3 Formal Purchases

Where the cumulative value of a procurement, including all extensions and renewals, involves an expenditure of public funds exceeding an agency's general delegation or a university's bid value benchmark, and the subject matter is not otherwise covered by an STC, the purchasing agency shall comply with the following procedures, unless otherwise exempted:

- Competition shall be solicited utilizing sealed bidding.
- Standard solicitation documents that include standard language, including the North Carolina General Terms and Conditions issued by P&C shall be used.
 - Prior approval from P&C must be received for proposed changes to standard language. Any modifications shall not conflict with P&C's North Carolina General Terms and Conditions. All deviations must receive prior P&C approval.
- The purchasing agency shall prepare and advertise the procurement.
- P&C must review and approve all solicitations prior to posting.
- Solicitations shall be advertised in NC eProcurement for a minimum of 10 calendar days.
 - Agencies may also advertise solicitations on their websites or disseminate via email or other means, to further encourage competition.
- The purchasing agency will conduct the evaluation and send the award recommendation to P&C.

- P&C must review and approve the award prior to moving forward with the selected vendor.

01 NCAC 05B .0301.

4.4.4 Email, Fax, or Telephone Bids

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 an agency's general delegation or a university's bid value benchmark. 01 NCAC 05B .0301.

4.5 Preparation of Solicitation Document

The solicitation document is the key document in any procurement. It conveys critical information regarding the who, what, where, when, why, and how of a solicitation. The solicitation document must contain all of the information vendors need to accurately respond to the state's request in a timely manner.

At a minimum, the following information shall be included in the solicitation:

- Specifications, requirements, terms and conditions, and delivery information
- Agency name
- Buyer name
- Buyer contact information
- Solicitation identification number
- Title (a short description of the good or service)
- Opening date, time, and location (street address, office, room number)
- Additional information required by the solicitation

01 NCAC 05B .0314.

If the solicitation includes a conference or site visit for potential vendors to attend, this information shall also be furnished with the advertisement, to include:

- Mandatory or non-mandatory attendance
- Date, time, and location
- Contact persons and phone number
- Other requirements, such as number of attendees allowed, preregistration requirements, and virtual conference access information, if relevant

4.5.1 References

The state 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. The state 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.

4.6 Insurance Coverage

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.

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

Minimum Coverage (\$)			
Contract Value	Worker's Compensation Employer's Liability	Commercial General Liability	Automobile Liability
Small Purchase	As required by North Carolina law	As required by North Carolina law	As required for risks involved in the procurement
More than Small Purchase, but less than \$1 million	\$250,000.00	\$500,000.00	<i>Bodily Injury and Property Damage</i> \$250,000
			<i>Un/Underinsured</i> \$250,000
			<i>Medical Payment</i> \$2,500
Greater than \$1 million	\$500,000.00	\$1 million	<i>Bodily Injury and Property Damage</i> \$500,000
			<i>Un/Underinsured</i> \$500,000
			<i>Medical Payment</i> \$5,000

Section 5: Competitive Sealed Bidding

5.1 Overview of Competitive Sealed Bidding

Competitive sealed bidding is required where the total expenditure for goods and services exceeds an agency's general delegation. 01 NCAC 05B .0301. For all procurements that exceed an agency's general delegation, sealed offers are solicited by the using agency. P&C must review and approve the solicitation prior to posting and prior to award.

5.2 Advertising Solicitations

Agencies shall advertise formal solicitations that exceed their general delegation via the NC eProcurement system. When advertisement is required, agencies shall advertise the solicitation for a minimum of ten calendar days prior to the designated bid opening date. 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.

5.3 Solicitation Addenda

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 in the NC eProcurement system using the same procedures as the original solicitation posting.

5.4 Bid Opening

Bids and proposals shall be opened publicly at the location, 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. 01 NCAC 05B .0503.

5.4.1 Bid Opening Procedures

It is important to record the bid opening results to be transparent about the process. 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, 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:
 - Bidder names
 - Manufacturer/Make
 - Model number
 - Delivery timeframe
 - Pricing (unless negotiation is anticipated)
- 7) Agencies 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.

5.4.1.1 One-Step or Two-Step Opening

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.
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.

5.4.2 Withdrawn, Void, or Recalled Offers

A "withdrawn bid" is a bid that is rescinded by the vendor prior to the bid opening. 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. Purchasers do not need to notify the SPO of withdrawal requests made prior to bid opening.

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. 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
- Inform the SPO of the reason for the request and whether it was allowed

5.4.3 Late Offers

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.

5.4.4 Bid Tabulation

Once the bid opening has occurred the purchaser 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. 01 NCAC 05B .0305

NOTE:

- Lengthy tabulations may not be available in the IPS.
- Requests for tabulations or tabulation information (such as pricing) that is not publicly available cannot be honored until after award.

5.5 Legal Review Thresholds

To ensure that contracts are legally sound and to protect the state from unnecessary risk, legal review of solicitations may be required. State law provides for legal review under certain circumstances. In addition to changes in standard terms and conditions or other triggers that may be addressed in this manual, legal review is required for:

- Contracts exceeding \$1 million
- Non-competed contracts exceeding \$5 million

Legal counsel should be included in the solicitation as early as practical. P&C will not approve award recommendations until any required legal review is complete.

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 for which an agency is seeking approval to spend under the contract.

5.5.1 Contracts Exceeding \$1 Million

All contracts that cumulatively are expected to exceed \$1 million shall be reviewed by the Contract Management Section (CMS) before P&C will approve the award recommendation. Statewide Term Contracts (STCs) exceeding \$1 million awarded by P&C also must be reviewed. There are no exceptions to this requirement. G.S. 143-50.1.

Some entities are exempt from CMS review. Most notably, university general counsel shall review contracts that exceed \$1 million. G.S. 114-8.3(b). Entities claiming an exemption from CMS review shall provide a citation that supports the exemption.

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 developed an e-form for this purpose. Contracts that are processed through P&C's electronic bid system do not have to be separately reported through the e-form.

5.5.2 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. G.S. 143-49(3a).

NOTE: Agencies shall seek approval for total contract value.

Section 6: Evaluations and Negotiations

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 evaluations, 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, prior to evaluation. After vendor selection, in certain circumstances, negotiation may be needed to secure better pricing or finalize the terms and conditions of the contract.

6.1 Determining Responsiveness

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.

01 NCAC 05A. 0112(28). A "responsive" offer is an offer that meets all of 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. 01 NCAC 05A .0112(6), 05B .0307, 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.

6.1.1 Signed Bid

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 legal counsel to determine whether a signed cover page can stand in lieu of the signed solicitation document.

6.2 Determining Responsibility

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.

6.3 Debarred Vendors

Debarred vendors are not entitled to enter into contracts with the state. 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 may also be required.

6.4 Confidentiality During Evaluation

During the period of evaluation and prior to award, only the information provided in the posted bid tabulation is public record. If negotiation is anticipated, pricing does not need to be posted in the bid tabulation and may not be available until after award.

Access to information about specific offers, including any accompanying information submitted with the offers, shall be limited to persons in the agency who are responsible for handling the bid evaluation and contract award. Vendor participation in the evaluation process shall not be permitted. Issuing agencies should limit vendor communications to those necessary to clarify offers or engage in negotiations.

After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of confidential information.

6.5 Evaluation Methods and Criteria

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 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.

The following evaluation methods may be used when appropriate:

- **Lowest Price Technically Acceptable**
 - Typically used with an IFB
 - Awards shall be made to the responsive and responsible vendor with the lowest price whose bid meets the specifications of the solicitation.
- **Best Value**
 - Typically used with an RFP
 - Specific criteria define how offers are evaluated and awarded.
 - Provide value analysis for selecting the most advantageous proposal factors beyond price. Stated criteria may include past performance, qualifications, experience, staffing plans, proposed technical approach, and other related factors.

6.5.1 Lowest Price Technically Acceptable

If the lowest price method is used, award must be made to the responsive and responsible vendor with the lowest price, if the bid meets the specifications of the solicitation (i.e., is technically acceptable). Trade-offs between price and performance are not allowed. Clarifications and vendor negotiations may be used with this method of award.

6.5.2 Best Value

The intent of Best Value procurement is to enable vendors to offer, and the agency to select, the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of the procurement rather than price.

Best Value evaluations are governed by G.S. 143-52(a) and 143-135.9.

The following information describes the Best Value procurement methodology:

- 1) A committee evaluates offers in accordance with the stated evaluation factors to determine which proposal offers the best trade-off between price and performance.
- 2) Specific evaluation criteria are provided in the solicitation document. The evaluation may only consider those factors and the statutory factors in the evaluation for award.
- 3) For solicitations that use Best Value evaluation, vendor scoring and ranking must be determined by using consistent rating methodologies, such as narrative, qualitative, quantitative, or numerical rankings.
- 4) The evaluation team must identify the strengths, deficiencies, weaknesses, and risks supporting the evaluation and document them in the procurement file.
- 5) Evaluation committees shall use only solicitation criteria to determine final ranks of offers, from most advantageous to least advantageous to the state. Narrative evaluations assess the strengths of an offer, and how they support the business objective, and the weaknesses and/or risks, and how they may implicate the business objective. The resulting justification of which offer is most advantageous to the state shall be done by consensus of the committee.

6.5.2.1 Example Evaluation Criteria

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
- 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:

- 1) Has sufficient ability to perform the contract
- 2) Is able to meet its short-term obligations, debts, liabilities, payroll, and expenses
- 3) Has provided complete, reliable, and accurate financial information regarding its business operation

- 4) Is financially solvent
- 5) 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.

6.5.2.2 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.

6.5.2.3 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.

Example of a Numerical Evaluation

Evaluation Factors		Maximum Possible Score
Cost		40
Technical	Corporate Background & Experience	40
	Technical Approach	20
Cost Proposal Points		40
Maximum Technical Proposal Points		60
Maximum Cost + Technical Proposal Score		100

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:

$$\text{vendor lowest cost} / \text{vendor cost}$$

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 (Recommended method)	Individual
<ul style="list-style-type: none"> • Evaluators reach one score collaboratively. <ul style="list-style-type: none"> ◦ Eliminates scoring discrepancies ◦ Reduces protests • Average does not equal consensus. 	<ul style="list-style-type: none"> • Evaluators reach scores independently and then average. <ul style="list-style-type: none"> ◦ Increases potential for scoring discrepancies ◦ Makes scheduling more convenient

6.6 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:

- The technical proposal shall not contain cost information.

- The cost proposal shall not contain technical information.

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

Agencies 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 specified in the solicitation.

6.7 Posting Bid Tabulations

A bid tabulation should be posted in the Interactive Purchasing System (IPS) within one business day of the bid opening. 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.

Non-NC eProcurement users' tabulations cannot be posted in the IPS without inserting a dollar amount. For the preliminary tabulation or for a two-step RFP, one dollar should be listed as a placeholder.

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.

6.8 Communications with Vendors

During evaluation, communications with vendors should be limited. Agencies may clarify offers or negotiate with vendors after offers are received. BAFOs shall be signed to document the contract changes resulting from negotiations.

Evaluators may request oral presentations or discussion with vendors to clarify the offers received.

6.9 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.

6.10 Basis for Rejecting Offers

Vendor offers may be rejected in part or whole. Bases 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 the purchasing agency 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

01 NCAC 05B .0501.

6.11 Negotiation

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

Agencies 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. 01 NCAC 05B .0503.

Negotiations shall be conducted by the agency if the procurement is valued less than its general delegation. Appropriate assistance may be sought from agency or P&C legal resources, depending on contract value and any relevant general delegation, special delegation, or exemption. 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, the state 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.

6.12 Negotiation Tips and Guidelines

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.

Do	Do Not
<ul style="list-style-type: none">• Avoid arguments and interruptions• Be ethical, fair, and firm• Be well-prepared• Be open to discuss alternatives• Attempt to reach a "win-win" result	<ul style="list-style-type: none">• Discuss other proposals• Be unreasonable or unfair• Negotiate beyond the scope of vendor's proposal

6.13 Award Recommendation

Once evaluations and negotiations have been completed with one or more selected vendors, the agency must prepare a written narrative summarizing the rationale for the selected offer as well as the reasons for non-selection of offers. 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.

6.14 Partial and Multiple Awards

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

- 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

Some term contracts require making an award to more than one vendor. This shall be limited to the number of vendors needed to reasonably satisfy the contract requirements. Care should be exercised to protect the character and principles of competition. GS 143-52.3.

6.15 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 or within one day after execution of the contract, whichever is later.

Section 7: Post-Award

7.1 Notices to Vendor

Once bid evaluations are complete and a vendor has been selected, the issuing agency should notify the selected vendor(s) of contract award. This notification should be provided prior to issuance of a purchase order. For competitive sealed bidding, award information shall be posted publicly to the NC eProcurement System.

7.2 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 the purchaser 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 the adoption of that specification or award of a contract, whichever is later.

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. 01 NCAC 05B .0103, 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. 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.

7.3 Review of Services for Acceptance

Agencies shall ensure that services comply with applicable codes, statutes, local ordinances, policies, and safety requirements. Agencies 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 agency Contract Manager or Project Manager unless otherwise stated in the contract.

7.4 Review of Goods for Acceptance

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 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 the agency.

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 the state 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 the proper agency division 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.

7.4.1 Inspection and Testing

Agencies should inspect and test goods promptly upon receipt consistent with the following:

- Agencies shall inspect goods upon delivery to ensure compliance with contract requirements and specifications.
- Agencies may authorize revisions and cost adjustments as needed after inspections are completed to account for discrepancies in quantity, quality, or deviations from the specifications. If an increase in cost results in the total contract value exceeding the agency's delegation, then prior approval from P&C is required.
- Agencies shall ensure that goods comply with applicable codes, statutes, local ordinances, policies, and safety requirements.
- Agencies shall contact vendors about delivered products that fail to meet contract specifications or requirements and document these communications in the procurement file.

7.4.2 Damaged Goods

Agency 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 the agency are documented.

Purchasing agents should determine where a subsequent damage claim is to be filed based on the terms specified in the contract or purchase order. Vendors should be notified of any potential impacts the agency may incur due to the damaged goods.

7.4.3 Inaccurate Orders

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 the purchasing agent and the vendor to discuss vendor performance. Purchasing agents may counsel vendors with multiple order discrepancies on how the vendor plans to improve its performance so they may be eligible for future contracts.

7.4.4 Inaccurate Quantities

Purchasing agents should resolve inaccurate quantities with vendors by either obtaining credit or replacement of goods that were shorted from shipment.

Receiving departments should notify purchasing agents 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. Buyers should document this for future reference when ordering this same item.

7.4.5 Late Shipments

When shipments are late, purchasing agents 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

7.5 Contract Closeout Checklist

It is the responsibility of each Agency Contract Administrator to ensure that the work under the contract has been completed prior to final payment. Once that has been determined, agencies should perform contract closeout processes. 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 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:

- 1) All goods and services have been received, completed, and accepted by the agency.
- 2) All deliverables, including reports, have been delivered and accepted by the agency. Contract administrators should compare actual performance against performance measures, goals, and objectives to determine whether all required work has been completed.
- 3) All monitoring issues have been resolved.

- 4) Vendor performance has been evaluated by comparing work completed against contract goals and objectives.
- 5) Final acceptance from the Project Manager has been received (if applicable).
- 6) Vendor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.
- 7) Any deficiencies found as part of the closeout process are documented, and resolved, if possible.
- 8) 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 that agencies 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.

7.6 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, the contracting agency may find a vendor in default of contract for failing to perform in accordance with the contract requirements and terms and conditions. The state has several documents frequently used to document performance issues and exercise contract default clauses:

- **Requests to Cure** are 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. G.S. 25-2-712.

7.7 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:

- 9) 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
- 10) 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).
 - a) 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:
 - i. The severity of the conduct identified in the findings and any recommended actions by the state auditor or internal auditor
 - ii. The vendor's history of performance on one or more contracts
- 11) For failure to pay required eProcurement fees

7.8 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.

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

7.8.1 Contract Renewals

Contract renewals are provided for in the solicitation document. They may be exercised by the state 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. 01 NCAC 05A .0112. A notification should be sent to the vendor informing them that the state has chosen to exercise a renewal option from the contract.

7.8.2 Contract Extensions

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 state and the vendor must agree to a contract extension, and a contract extension document must be drafted and executed by both parties. 01 NCAC 05A .0112.

SPO approval must be received for a contract term that exceeds three years. This approval must be received before an agency can enter into a contract extension. SPO approval for an extended contract term is required regardless of contract value. 01 NCAC 05B .0319.

After the contract extension has been executed by the state and the vendor, the agency must post a public notification of the extension to P&C's electronic bid system. The requirements of the posting are provided in 01 NCAC 05B .0320.

Section 8: Procedures and Records

8.1 Procurement File Maintenance

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
- 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, and freight bills

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

8.2 Public Records and Confidentiality

Solicitation information and documentation shall be confidential until a contract is awarded, except where deemed necessary by the purchaser to develop a complete contractual document. 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, the purchasing agent shall review and redact information marked confidential by the vendor. Pricing shall not be confidential.

8.3 Public Records Requests

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. 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 an agency's Public Information Officer for assistance.

Public Record Categories	
<ul style="list-style-type: none">• Documents• Emails• Papers• Letters• Maps• Films• Artifacts• Books	<ul style="list-style-type: none">• Photographs• Sound Recordings• Magnetic or other tapes• Electronic data processing records• Materials made or received pursuant to law or ordinance in connection with the government or its subdivisions

Agencies are required to make procurement files available as a public record. The following procedures are applicable when making files available to the public:

- 1) The public should submit a formal request for the desired documents.
- 2) Legally required redactions, including removal of information appropriately marked confidential shall be completed prior to public viewing.
 - a) Pricing or total award costs are always public record and shall not be marked confidential.
- 3) A minimal cost should be charged for use of the state's paper, toner and equipment. This charge cannot be more than the actual cost to copy the records. Normally, the charge cannot include employee time.
- 4) Agencies are not required to create or compile a record that does not exist. Agencies may voluntarily elect to create or compile a record and may negotiate a reasonable charge for the service. G.S. 132-6.2(e).

- 5) Canceled solicitations that are anticipated to be reissued in the near future shall remain confidential until after an award is made.
- 6) Dollar amounts awarded to specific vendors are available on P&C's electronic bid system and are public information.
- 7) Vendor complaint records are also public; requests for copies will be handled in the same way as copies from procurement files.

8.4 Redacted Information

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 agency 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) provide more information regarding PII. For procurement purposes, commonly redacted information includes:

- Social security numbers
- Federal taxpayer identification numbers (EIN)
- Bank account or credit card information
- Information marked "CONFIDENTIAL"
- Vendor-submitted financial documents

8.5 Record 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. Agencies should retain contracts for the duration of any applicable warranty.

Agencies 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.

Section 9: Bid Protests

9.1 Bid Protests

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, based on the contract amount. 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." 01 NCAC 05A .0112. Thus, a vendor must have submitted a response to the procurement at issue in order to submit a bid protest.

9.2 Bid Protest Procedures

To ensure fairness to all vendors and to promote open competition, agencies and P&C shall actively follow up and be consistent in responding to a vendor's protest concerning contract awards.

Protests of contracts that exceed an agency's delegation are heard by the SPO. Protests of contracts valued less than an agency's delegation are handled by the agency.

01 NCAC 05B .1519. Agencies should establish procedures to handle vendors' protests for contracts valued below their general delegation.

9.2.1 Protest Process Under Delegation

Protests for contracts valued under an agency's general delegation shall be heard by the agency. The below process shall be followed:

- 1) Vendor submits a written request for a protest meeting to the agency's executive officer or their designee 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) Within five calendar days from receipt of the protest letter, the executive officer shall submit a copy to the SPO.
- 3) **If a meeting is refused:** Within ten calendar days from the date of receipt, the 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.

A copy of the executive officer's decision letter shall be forwarded to the SPO.

- 4) **If a meeting is granted:** The meeting must be scheduled within thirty calendar days from receipt of the protest, unless mutually agreed.
- 5) Within ten calendar days after the meeting, the executive officer shall notify the vendor of the results of the protest meeting and the appeal rights under Article 3 of G.S. 150B. A copy of the executive officer's decision letter shall be forwarded to the SPO.
- 6) If there is any further administrative or judicial review of the award, the purchasing agency shall notify the SPO in writing.

9.2.2 Protest Over Delegation

Protests for contracts that exceed an agency's general delegation shall be heard by the SPO. The below process shall be followed:

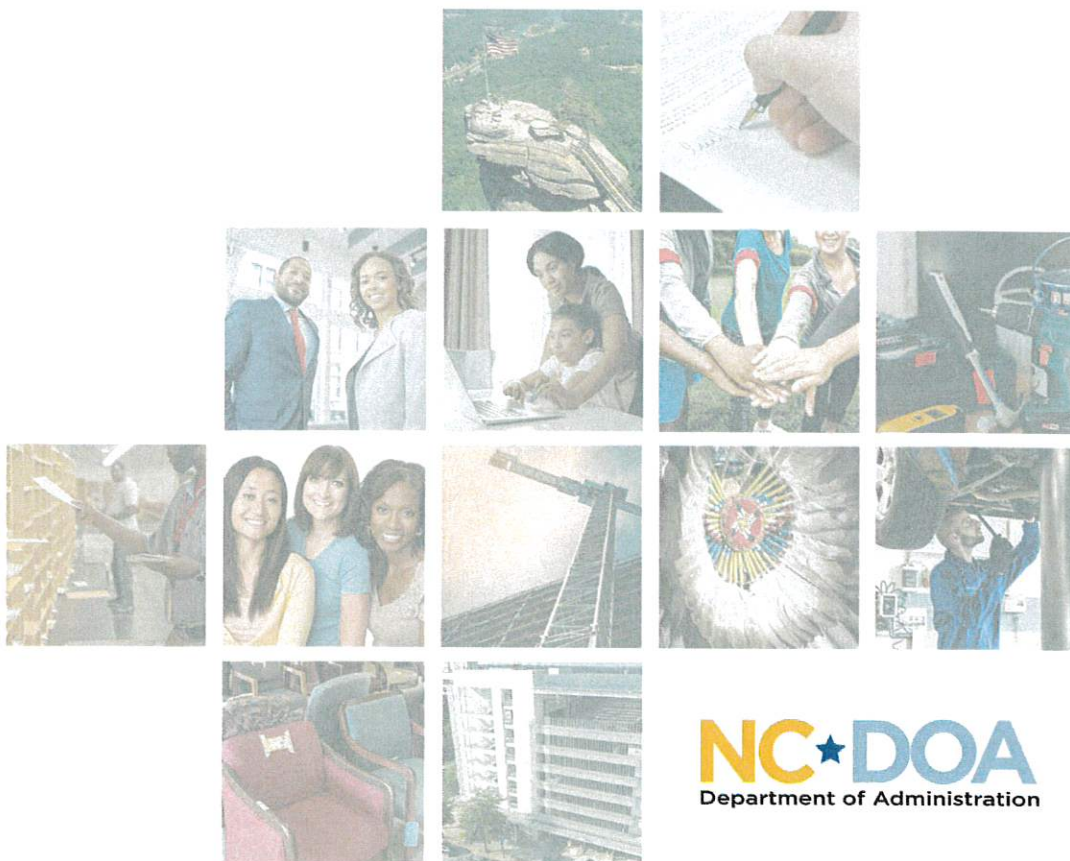
- 1) Vendor submits a written request for a protest meeting to the SPO within thirty calendar days from the date of award. The vendor's request shall contain reasons why it has a concern with the award and any supporting documentation.
- 2) **If a meeting is refused:** Within ten calendar days from the date of receipt, the SPO 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.
- 4) Within ten calendar days after the meeting, the SPO shall notify the vendor of the results of the protest meeting and the appeal rights under Article 3 of G.S. 150B.
- 5) If there is any further administrative or judicial review of the contract award, the SPO shall notify the Secretary in writing.

9.3 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 the state. 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 side.

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 the state to ask questions to further clarify the issues. The protesting vendor and the awarded vendor shall direct their comments to the state and not to one another. The state is not required to defend its position or answer vendor questions in the protest meeting.



NC★DOA
Department of Administration

§ 143-129. Procedure for letting of public contracts.

(a) Bidding Required. - No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of less than five hundred thousand dollars (\$500,000) without complying with the provisions of this section.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement and Letting of Contracts. - Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Proposals may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof may assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and the board or governing body shall award the contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will

agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to re-advertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) Contract Execution and Security. - All contracts to which this section applies shall be executed in writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and the contract shall not be altered except by written agreement of the contractor and the board or governing body. The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

(d) Use of Unemployment Relief Labor. - Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Exceptions. - The requirements of this Article do not apply to:

- (1) The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; or (ii) any other government unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid

or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or payment in full that may be required by regulations of the governmental unit or agency disposing of the property.

- (2) Cases of special emergency involving the health and safety of the people or their property.
- (3) Purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.
- (4) Construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.
- (5) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.
- (6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when: (i) a particular medical item or prosthetic appliance is needed; (ii) a particular product is ordered by an attending physician for his patients; (iii) additional products are needed to complete an ongoing job or task; (iv) products are purchased for "over-the-counter" resale; (v) a particular product is needed or desired for experimental, developmental, or research work; or (vi) equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all purchases made pursuant to this subdivision. These records are subject to public inspection.

- (7) Purchases of information technology through contracts established by the Department of Information Technology as provided in Article 15 of Chapter 143B of the General Statutes.
- (8) Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes.
- (9) Purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.
- (9a) Purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal contract.

- (10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included in the exception. A demo item is one that is used for demonstration and is sold by the manufacturer or retailer at a discount.
- (11) Contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1.
- (12) Build-to-suit capital leases with a private developer under G.S. 115C-532.

(f) Repealed by Session Laws 2001-328, s. 1, effective August 2, 2001.

(g) Waiver of Bidding for Previously Bid Contracts. - When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

- (1) The United States of America or any federal agency;
- (2) The State of North Carolina or any agency or political subdivision of the State; or
- (3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) Transportation Authority Purchases. - Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.

- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.
- (5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection.

(i) Procedure for Letting of Public Contracts. - The Department of Transportation ("DOT") and the Department of Administration ("DOA") shall monitor all projects in those agencies that are let without a performance or payment bond to determine the number of defaults on those projects, the cost to complete each defaulted project, and each project's contract price. Beginning March 1, 2011, and annually thereafter, DOT and DOA shall report this information to the Joint Legislative Committee on Governmental Operations.

(j) [Use of E-Verify Required. -] No contract subject to this section may be awarded by any board or governing body of the State, institution of State government, or any political subdivision of the State unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6; 1997-174, ss. 1-4; 1998-185, s. 1; 1998-217, s. 16; 2001-328, s. 1; 2001-487, s. 88; 2001-496, ss. 4, 5; 2005-227, s. 1; 2006-232, s. 2; 2007-94, s. 1; 2007-322, s. 4; 2007-446, s. 6; 2010-148, s. 1.2; 2011-234, s. 1; 2013-418, s. 2(c); 2015-241, s. 7A.4(s); 2017-81, s. 1; 2021-80, s. 2.8.)