

# **Fiscal and Regulatory Impact Analysis**

Purchase and Contract  
01 NCAC 05B

Prepared by

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**A. General Information**

Agency:

NC Department of Administration

Title and Citation of Rule:

- 01 NCAC 05A .0112 Definitions
- 01 NCAC 05B .0301 Contracting Requirements
- 01 NCAC 05B .0314 Solicitation Documents
- 01 NCAC 05B .0318 Terms and Conditions
- 01 NCAC 05B .0319 Contract Terms
- 01 NCAC 05B .0320 Contract Extensions
- 01 NCAC 05B .0321 Factors for Contract Extension or Renewal

Statutory Authority:

N.C.G.S. § 143-48.3, -48.6, -49, -50.1, -52, -53, -53.1, -57, -60 and N.C.G.S. § 135.9

Impact Summary:

State Government:	Yes
Local Government:	No
Substantial Impact:	Yes

**B. Executive Summary**

The Division of Purchase and Contract (Division), as the central procurement authority, is proposing several rule revisions that will modernize state procurement by streamlining processes and granting state agencies additional purchasing flexibility. Many of the state procurement processes are out of date and need to be revamped with an eye toward promoting efficiency and consistency. Most notably, the current dollar thresholds that govern state procurement have remained the same for decades, and the current procurements processes are based on archaic practices that no longer promote the timely and economical acquisition of goods and services for the state. Thus, a meaningful update to these practices is needed to facilitate state business.

The proposed rules would amend the method by which the Division and Purchasing Agencies procure goods and services with the goal of balancing efficiency, value, and risk. Resulting staff time savings and shorter procurement timelines are expected to increase the efficiency of government services and operations while maintaining appropriate contract guidelines.

The Division proposes to increase the small purchase threshold from \$5,000 to \$25,000 and update the threshold according to inflation every two years. The small purchase threshold has not changed for 35 years; the proposed small purchase threshold of \$25,000 reflects the effect of inflation on prices for goods and services over that time. Purchasing Agencies may make small

purchases in accordance with their own policies; competitive bidding and Division approval is not required for purchases that are less than the small purchase threshold.

Revisions to rules 01 NCAC 05B .0301 and .0314 reflect legislative changes that increased the allowable general delegation benchmark for state agencies from a maximum of \$25,000 to a maximum of \$100,000 (Session Law 2020-90 Part I). Formal, sealed bidding procedures along with Division review and approval is required for goods or services contracts that exceed the general delegation threshold established by the Division for each agency.<sup>1</sup>

The Division intends to raise state agencies' general delegation benchmarks in a phased approach, with the goal of setting the benchmark for most agencies at \$100,000 by 2023. The Division retains the authority to set agency delegations after "consideration of their overall capabilities" pursuant to G.S. 143-53(a)(2).

The proposed rules also align the processes for purchasing goods and services above the general delegation benchmark for consistency and to reduce confusion. Historically, procurements for goods and services that exceed an agency's general delegation have followed different procedures, with service contracts being handled primarily by state agencies and goods contracts handled primarily by the Division with agency input. The proposed rule change would harmonize this process with the Division acting in an oversight capacity for all contract types.

The proposed rules would also formalize the process for purchases falling in an intermediate range. Purchasing Agencies will be able to award contracts that fall *between* the new \$25,000 small purchase threshold and the higher general delegation thresholds using an informal bidding process. In this intermediate range, Purchasing Agencies must solicit offers from vendors, either directly or through the Division's Electronic Bid System. A formal solicitation involving sealed bids and Division approval is not required. In order to mitigate risk and ensure favorable contract terms for the state, Purchasing Agencies must use Division solicitation documents that include the General Terms and Conditions that are required by law.

The Division processes an average of approximately 1360 solicitations per year. Of that total, the Division anticipates that approximately 266 purchases, which account for 19.6% of total number of purchases, per year will fall under the new small purchase threshold. In addition, approximately 594 additional purchases per year, which account for 43.6% of total purchases, will fall in the intermediate range (between \$25,000 and \$100,000), generating both costs and benefits to government entities, vendors, and the public.

By raising the small purchase and general delegation thresholds, fewer purchases will require Division review and approval which could result in more contracts containing unfavorable contract terms resulting in additional legal exposure to the state. Moreover, contracts may fail to properly define vendor performance requirements and expectations resulting in contract management issues. However, those potential outcomes are mitigated in several ways:

- Contracts above the small purchase threshold must include the terms and conditions established by the Division and all are subject to tracking, compliance review, and audits.

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<sup>1</sup> The general delegation benchmark applies to state agencies; community colleges and universities have different benchmarks pursuant to G.S. 116-31.10 and G.S. 115D-58.14.

- The Division will assess agency capabilities and performance before increasing the general delegation threshold.
- The Division will also maintain oversight over solicitation development, the bidding process, and the award of contracts valued above an agency's general delegation threshold.
- The Division also proposes to add evaluation and documentation criteria for contract renewals and extension decisions to strengthen and enforce the expectation that, at the end of a contract's initial term, procurement officers assess whether continuing the contract is in the best interest of the state compared to available alternatives.

It is expected that impacts will result from these modifications; however, these impacts should be of a short duration and incurred during implementation phase, with the effects eventually subsiding once the process changes are implemented. For example, some Purchasing Agencies will incur impacts in order to satisfy the conditions for higher general delegations. Agencies will be required to adequately train their staff, develop internal policies and controls to ensure process compliance, and provide greater access to legal staff to negotiate vendor terms and conditions and respond to vendor protests.

Similarly, the Division expects to devote significant staff time to implement the phased increase in general delegations. The Division will need to train Division staff on the new process for reviewing goods and services solicitations, develop and implement a revised process for evaluating agency general delegations, and prepare training and guidance materials for agencies to rely on in handling higher dollar contracts. The Division may also incur some impacts resulting from needed modifications to the Electronic Bid System for the new thresholds and approval processes.

In addition, Purchasing Agencies may spend additional time evaluating and documenting contract renewal or extension decisions according to the proposed guidelines. There is a dearth of information about the number of contracts that are extended or renewed annually, but the Division expects the time impacts for this documentation requirement to be minimal. The factors to be considered prior to exercising an extension or renewal should be readily available to purchasing agents, or easily discernable with minimal research, and are routinely considered by purchasing staff in making contracting determinations.

However, these impacts are outweighed by the expected staff time savings and efficiency gains resulting from the higher small purchase and general delegation thresholds. Staff time savings amount to approximately \$532,000 annually for Purchasing Agencies and up to \$1,200,000 annually for the Division after complete phase-in.<sup>2</sup> Procurement timelines will decrease from an average of 26 days to as little as one day for the approximately 266 additional purchases that will fall beneath the new \$25,000 small purchase threshold.<sup>3</sup> Timelines will decrease from 29 days to an average of approximately 15 days for purchases between \$25,000 and the \$100,000 general delegation threshold, on average. Faster procurements will improve the efficiency of government services and operations, benefiting the people we serve. Furthermore, the Division will be able redirect staff time that had been dedicated to lower dollar procurements to strategic sourcing work, such as evaluating

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<sup>2</sup> The Division's potential cost savings include amounts calculated for both the small purchase and informal processes. As discussed below, rather than reduce staff hours, Division staff will focus on strategic sourcing initiatives.

<sup>3</sup> This number is based on the number of purchases for fiscal years 2017-2020.

statewide term contract opportunities. Statewide term contracts allow the Division to leverage the state's buying power in order to secure favorable vendor pricing as discussed further below.

## **C. Summary of the Proposed Regulation**

### 01 NCAC 05A .0112 Definitions

This rule establishes a standard definition for commonly used terms throughout 01 NCAC 05 and its subchapters. The current iteration of this rule adds six new terms: Contract Term, Extension, Initial Contract Term, Professional Services, Renewal, and Solicitation Documents. This amendment also contains grammatical and technical corrections and updates several definitions with newly defined terms and references.

### 01 NCAC 05B .0301 Contracting Requirements

This rule is central to the procurement process. It sets forth the dollar thresholds and related processes Purchasing Agencies must adhere to in acquiring goods and services.

The current iteration of the rule sets forth the small purchase benchmark at \$5,000 and directs Agencies to develop internal processes to handle these purchases. The rule further provides direction and information for Purchasing Agencies for procurements that are governed by a general delegation or bid value benchmark, which are the thresholds over which goods and services must be handled by the Division.

The rule further delineates the process by which goods and services shall be procured and provides guidance on the competitive bidding procedure that must be followed for the procurements that exceed an Agency's general delegation or bid value benchmark.

The current version of the rule also contains the three-year limitation for services contracts that has been moved to the newly created Rule .0319, as discussed further below.

The proposed iteration of the rule sets forth three distinct processes for solicitations based on dollar amount: small purchase, informal bidding, and formal bidding.

#### *Small Purchase*

Purchasing Agencies may make small purchases in accordance with their own policies; competitive bidding and Division approval is not required. The current small purchase threshold of \$5,000 has not changed in 35 years and inflation has since increased prices for goods and services.

The Division proposes to increase the small purchase threshold to \$25,000 to allow for greater flexibility in responding to market changes and to promote efficiency in the procurement process. The State Procurement Officer will update the threshold for inflation every two years.

#### *Informal Bidding*

The informal bidding procedure will apply to procurements valued between the small

purchase benchmark and a Purchasing Agency's general delegation. The informal bidding procedure directs Purchasing Agencies to seek competition without the more stringent requirements of the formal bidding procedure.

At minimum, Purchasing Agencies must solicit offers from vendors, either directly or through the Division's Electronic Bid System. A formal solicitation involving sealed bids and Division approval is not required. Purchasing Agencies must use Division solicitation documents that include the North Carolina General Terms and Conditions provided by the Division. For purchases that fall in this range, agencies can use the appropriate solicitation document for their procurement based on complexity and risk. Where appropriate, agencies can use informal templates that require minimal time to develop, thereby saving significant time on document development. Moreover, there is no minimum amount of time that an informal solicitation must be posted. Informal procurements do not need to satisfy Rule .0316, which requires a ten calendar-day advertising period. This should expedite the contracting process because Purchasing Agents can open vendor offers upon receipt and move forward with contract formation without waiting several days for a formal bid opening.

### *Formal Bidding*

The formal bidding procedure is required for all purchases that exceed a state agency's general delegation limit or the bid value benchmark for universities and community colleges. These solicitations must meet the requirements of competitive, sealed bidding and must come to the Division for review and approval.

Recent legislation allows the Division to set the general delegation threshold up to a maximum of \$100,000 for state agencies.<sup>4</sup> The limit was previously \$25,000. The Division intends to raise state agencies' general delegation benchmarks in a phased approach with the goal of setting the benchmark for most agencies at \$100,000 by 2023. The Division intends to raise all agencies from \$25,000 to \$50,000 upon implementation of this rule change, with the goal of raising all agencies to \$100,000 by 2023. Agencies may be raised to \$100,000 after evaluation of several factors, including the number of agency procurement events in the last 12 months, the submission of the agency's procurement plan for the current fiscal year, the agency's staffing and training, and past results of agency performance as evidenced in previous compliance reviews or audits.

### *Procedural Change*

The final change to Rule .0301 aligns the processes for purchasing goods and services valued over an Agency's general delegation. Under the proposed iteration, both purchases must come to the Division for review and approval prior to publicly posting and prior to award. With the exception of statewide term contracts, the Division will no longer solicit offers for commodities and printing directly. The proposed process change will mirror the process agencies follow when procuring IT goods and services through State Information Technology Purchasing office which will further promote consistency among state agencies for all procurements and will eliminate confusion regarding the process.

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<sup>4</sup> The general delegation benchmark applies to state agencies; community colleges and universities have different benchmarks pursuant to G.S. 116-31.10 and G.S. 115D-58.14.

### 01 NCAC 05B .0314 Solicitation Documents

The current purpose of this rule was to provide guidance as to when to use certain forms provided by the Division of Purchase and Contract. This rule was originally created and adopted on February 1, 1996, with no revisions since. As the needs of the State, as well as the nature of the goods and services procured have changed, the Division's solicitation documents have evolved to accommodate those needs. The current rule, although helpful to identify which template should be used, did not provide any guidance as to the types of information that is needed to develop those templates for use in a solicitation. The newly revised rule will provide the Purchasing Agency with the information they need to utilize the Division's solicitation documents more completely. It also provides parameters and minimum content for the Division to follow in revising or modifying the solicitation document templates.

### 01 NCAC 05B .0318 Terms and Conditions

This is a newly created rule for the purpose of expounding on the information required to be included in the Division-created solicitation document templates and to aid Purchasing Agencies to conform to the standard legal principles required in state contracts. This rule delineates those provisions required for every state contract and allows for those supplemental terms and conditions as may be required for unique, complex, or highly technical procurements.

### 01 NCAC 05B .0319 Contract Term

This is a newly created rule for the purpose of setting contract term limits (including two one-year renewals) to a three (3) year term unless the Purchasing Agency has received prior approval from the State Procurement Officer. Although this requirement has historically been codified under Rule .0301, it has been extracted and formalized here.

### 01 NCAC 05B .0320 Contract Extensions

This is a newly created rule for the purpose of limiting extensions of state contracts where the contract extension would result in a total contract term that exceeds three (3) years. For such contracts, the Purchasing Agency must receive prior approval from the State Procurement Officer. Although this requirement has historically been codified under Rule .0301, it has been extracted and formalized here.

This rule also sets forth the process by which a Purchasing Agency must post a public notification of the extension and the content required in the notification. This posting requirement will increase transparency and government accountability.

### 01 NCAC 05B .0321 Factors for Contract Extension or Renewal

This is a newly created rule which will provide the Purchasing Agency with the factors it is required to consider and document in the procurement file prior to extending or renewing a contract. This rule provides guidance as to who must approve the extension or renewal, when the extension or renewal shall be obtained, and when the Purchasing Agency is required to seek prior approval

from the State Procurement Officer.

#### **D. Impact Analysis**

##### *Small Purchases*

The proposed rule changes described above would apply statewide to enable State Agencies and institutions subject to N.C.G.S. 143, Article 3 to handle their own small dollar procurements while providing additional guidance on related processes in order to realize potential cost savings or value improvements.

Based on historical data, approximately 84% of the total number of transactions for goods and services overseen by the Division (those above \$5,000) amount to only 20% of total procurement expenditure. By raising the small purchase benchmark to \$25,000, approximately 266 fewer solicitations per year will have to be developed due to the increased flexibility Purchasing Agencies would have in deciding whether to utilize Division solicitation documents for small dollar purchases.

This change results in staff time savings for Purchasing Agencies and the Division. First, Purchasing Agencies would develop their own solicitation documents. Since they are the subject matter experts, the development time should be reduced. Secondly, submitting procurements to the Division for review and approval takes additional time that would not be required if the procurement is handled solely by the Purchasing Agency. Procurement timelines will decrease from an average of 26 days to as little as one day for the 266 purchases that fall between \$5,000 and \$25,000.<sup>5</sup> It is difficult to ascertain exactly how much time Purchasing Agencies spend developing solicitation documents, but based on the Division's experience and assuming a similar amount of time is expended by state agencies, staff time savings from increasing the small purchase threshold should amount to approximately \$532,000 annually for Purchasing Agencies. This figure captures the time savings from an average of 26 total days to one day. Because of the nature of the position, purchasing agents juggle multiple procurements and do not focus all of their time daily on one procurement. As such, an average of two hours per day per procurement was used to estimate these costs. At \$40 per hour for an average of two hours per day over 25 days, the cost savings per procurement is approximately \$2,000. This totals \$532,000 across all 266 procurements that will fall in under the increased small purchase threshold.

Furthermore, the Division will be able to devote more staff time toward the strategic work of identifying statewide term contract opportunities, which could provide savings to state and local government entities compared to individual agency contracts. State term contracts allow the Division to leverage the state's buying power in order to secure favorable vendor pricing. The Division contracts with vendors and makes those contracts available to state agencies, negating the need for agencies to procure these goods and services in a piecemeal fashion. The Division utilizes state procurement data to identify goods and services with sufficient expenditures to warrant the development of a statewide term contract. State agencies are required to use statewide term contracts in order to ensure that these cost savings are realized.

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<sup>5</sup> This number is based on the number of purchases for fiscal years 2017-2020.



The benefit here is twofold. First, there is a significant time savings resulting from strategic sourcing initiatives since agencies have a readily available contractual framework to utilize which negates the need for a solicitation. Second, statewide term contract pricing is more favorable than pricing an agency can secure on its own resulting in greater cost savings to the state for the goods and services purchased. The Division currently maintains 95 statewide term contracts which make a variety of routinely purchased goods and services available to Purchasing Agencies without the need to contract independently. In fiscal year 2021, total statewide term contract spend was approximately \$612 million.

Local government agencies are not directly impacted by this change, since they are not subject to the small purchase benchmark or other contract duration requirements. However, local governments are permitted to buy from Statewide term contracts so the benefit to the State from increased competition or improved vendor offerings would benefit them directly.

Vendor impacts from these proposed changes should be minimal. For purchases in the informal range, vendors may benefit from less formal response mechanisms depending on the solicitation document issued by the purchasing agency. Small businesses and historically underutilized businesses vendors are likely benefit from the simplified process. Moreover, contract formation may be expedited under this proposed change since fewer procurements will require formal, sealed bidding. Vendors will not perceive a significant difference in the process change as they will essentially be following a similar process but will respond to the agencies directly instead of to the Division. The increase in the small purchase benchmark could have an uneven impact on vendors depending on whether a particular vendor is routinely selected by agencies for these purchases. For small purchases, agencies may choose to purchase from vendors with which they have an established relationship, and this could potentially exclude otherwise competitive vendors from these purchases.

### *Informal Bidding Process*

The informal bidding procedure will apply to procurements valued between the small purchase benchmark and an Agency's general delegation. Purchasing Agencies must solicit offers from vendors, either directly or through the Division's Electronic Bid System, but a formal solicitation involving sealed bids and Division approval is not required. Purchasing Agencies must use Division solicitation documents that include the North Carolina General Terms and Conditions provided by the Division, but where appropriate, they can use informal templates that require minimal time to develop, thereby saving significant time on document development. Moreover, there is no minimum amount of time that an informal solicitation must be posted. Informal procurements do not need to satisfy the advertising requirements of Rule .0316, which requires a ten calendar-day advertising period. This should expedite the contracting process because Purchasing Agents can open vendor offers upon receipt and move forward with contract formation without waiting several days for a formal bid opening.

For informal purchases, because competitive, sealed bidding is not required, procurement timelines should decrease from an average of 29 days to an average of approximately 15 days. The Division plans to increase agency general delegations through a phased in approach with the goal of increasing all agencies to a \$100,000 general delegation by 2023. Initially, most agencies will have a general delegation of \$50,000. During the implementation of the general delegation increases, 344 total procurements annually will fall in the informal range. A total of 594

procurements annually should fall in this range once all agencies have qualified for the maximum general delegation amount.

The Division could realize approximately \$665,000 in staff savings for informal purchases as a result of the increased dollar threshold, since Division staff will no longer be a part of this process for the approximately 594 procurements that will qualify for this reduced treatment. This figure captures the time savings from an average of 29 total days to approximately 15 days. Because of the nature of the position, purchasing agents juggle multiple procurements and do not focus all their time daily on one procurement. As such, an average of two hours per day per procurement was used to estimate these costs. At \$40 per hour for an average of two hours per day over 14 days, the cost savings per procurement is approximately \$1,120. This totals approximately \$665,000 across all 594 procurements that will fall in the informal range. However, rather than reduce staff hours, Division staff efforts will be redirected to the development of statewide term contracts. Purchasing agencies will benefit from a lesser cost savings, since this work will now fall to their staff, but the flexibility provided from the informal approach should result in improvements over the more formal process required for purchases that exceed their general delegation.

#### *Purchases Above Agency Delegation or Bid Value Benchmark*

The increased general delegation limits will require agencies to incur some costs to prepare to handle the additional procurements. Agencies will be required to adequately train their staff, develop internal policies and controls to ensure process compliance, and provide greater access to legal staff to negotiate vendor terms and conditions and respond to vendor protests. However, these costs are expected to be minimal and of a short duration. The development of internal policies and controls is a discrete exercise that can be accomplished in as little as a few weeks as most agencies already have policies governing purchases valued below their general delegation that can simply be updated for the new thresholds. Similarly, staff training requirements will consist of educating personnel on the new thresholds.

Agencies may also incur some additional costs as a result of harmonizing the procurement of goods and services, since the development of goods solicitations will fall to agency staff rather than Division staff; however, the increased dollar thresholds should mitigate some of this since more procurements will fall into the small purchase or informal process and will benefit from expedited processing.

Similarly, the Division expects to devote significant staff time to implement the phased increase in general delegations. All of these impacts will be incurred during implementation phase but should be of short duration and will subside once the process changes are implemented. The Division will need to prepare myriad training and guidance materials for agencies to rely on in handling higher dollar contracts, vendor bid protests, and contract negotiations for those contracts that fall between the small purchase threshold and their delegation amount. The Division will have to develop and disseminate materials that will assist the agencies with rule interpretation for each of the three dollar-value thresholds and identify strategies that agencies can utilize to increase historically underutilized business participation as a result of the increased thresholds. The Division will also need to develop and implement a revised process for evaluating agency general delegations that will take into consideration the number of agency procurement events in the last 12 months, the submission of the agency's procurement plan for the current fiscal year, the agency's staffing and

training, and past results of agency performance as evidenced in previous compliance reviews or audits. Division staff will need to be trained on the new process for reviewing goods and services solicitations in order to be prepared for their new oversight role, in addition to preparing Division staff to assist agencies in navigating the new processes and dollar thresholds as they will likely be the first point of contact for agency questions. The Division will also incur some impacts resulting from modifications to the Electronic Bid System for the new thresholds and approval processes, as well as staff training for those modifications.

For purchases that exceed Agency general delegations and require Division approval, solicitation development costs to the Division are approximately \$40.00 per hour for an average of 8 hours per procurement. This equates to approximately \$320 per procurement for staff time opportunity costs. By redistributing this responsibility, there are no substantial additional cost impacts to the Agencies. Moreover, because the purchase thresholds are increased the procurements will, on an individual basis, require less process. A larger number of procurements will fall under the small purchase benchmark and informal bidding process, rather than the formal bidding process, which should result in less time spent per procurement. Similarly, Agency personnel are the subject matter experts, and solicitation development should be more efficient when handled completely at the Agency level without Division input.

#### *Procedural Change*

The final change to Rule .0301 aligns the processes for purchasing goods and services valued over an Agency's general delegation. Historically, procurements for goods and services that exceed an agency's general delegation have followed different procedures, with service contracts being handled primarily by state agencies and goods contracts handled primarily by the Division with agency input. The proposed rules would conform those processes and have the Division serve in an oversight capacity for all contract types. Under the proposed iteration, both purchases must come to the Division for review and approval prior to publicly posting and prior to award. Both the Division and state agencies should realize time savings from this procedural change. First, Purchasing Agencies would develop their own solicitation documents, as the subject matter experts document development time should be reduced. Similarly, Division staff will no longer need to liaise with the agency in order to develop solicitation documents based on agency specifications. Division staff will instead serve in an oversight capacity to ensure the accuracy and completeness of the solicitation documents developed by the agencies. This change would also align Division processes with those of the Statewide IT Purchasing office, thereby eliminating unnecessary complexity and confusion for state agencies.

#### *Contract Extension and Renewal Guidelines*

The General Assembly has defined best value as "(t)he selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors..." Although this statement refers to another commodity/service category, the precept is the same. Quality and price are always the critical component of a value equation whether the reference is to a technology procurement or construction or goods and services.

The contract extension guidelines in Rule .0320 will benefit the State, allowing for a best

value contract, by requiring the Purchasing Agency to conduct market research on the relevant industry in which a contract is being established, consideration of new risk factors, presence and effectiveness of performance-based contract metrics, and the impact on transitioning to a new vendor.

It is anticipated that Purchasing Agencies will spend an estimated one to two hours per contract evaluating and documenting contract renewal or extension decisions according to the proposed guidelines. One impetus for this requirement is to improve transparency with regard to contract status and provide data about contract extensions and renewals. There is a dearth of information about the number of contracts that are extended or renewed annually. If 15% of the contracts processed annually require extensions or renewals that would be approximately 130 contracts, at approximately \$40.00 per hour for two hours this equates to approximately \$10,400 spread across all Purchasing Agencies. The Division expects the time requirements for this documentation requirement to be minimal. The factors to be considered prior to exercising an extension or renewal should be readily available to Purchasing Agents, or easily discernable with minimal research, and are routinely considered by purchasing staff in making contracting determinations. For example, a vendor's past performance under a contract and the impact of transitioning to a new vendor on the Agency's ability to meet the requirements of its programs are points of information that will be readily known. Market research does not need to be exhaustive but should be sufficiently thorough to reveal major changes in the relevant industry.

#### **E. Alternatives**

Changes to 01 NCAC 05B .0301, .0314, and .1604 were discussed at length, and it was determined that there to is no alternative option to amending these rules. Due to the changes made to N.C. Gen. Stat. 143, as a result of Session Law 2020-90, Rules .0301, .0314, and .1604 are no longer in compliance with the statute. Session Law 2020-90 increased the general delegation threshold from \$25,000 to \$100,000, requiring changes to these three rules. Additionally, due to the age of these rules and subsequent changes to the requirements of the rule-making process, the additional rules discussed above had to be created in order to make the changes to Rules .0301 and .0314 conform in both style and substance. As Rule .1604 was a general recitation of the statute, this rule is being repealed in its entirety.

Proposed changes to Rule .0301 were scrutinized to ensure that the rule accurately reflects the most efficient and logical representation of the procurement process. With regard to harmonizing the processes for the procurement of goods and services, one alternative that was explored was to leave the process as currently written, but this would not further the Division's aims of improving consistency and efficiency. For ease of understanding, this rule was rearranged and broken out into new proposed rules. Changes to this rule also allowed the Division the opportunity to clarify the procurement process, allow for the use of new technology, and incorporate recently defined terms provided in 01 NCAC 05A .0112.

With regard to the selected dollar-value thresholds, consideration was given to the current small purchase benchmark of \$5,000 and the value of that sum in today's money. It was concluded that \$25,000 has roughly the same value as the original amount when it was adopted 35 years ago, and any alternative amount would not have the same effect. A firm dollar figure without indexing was also considered, but the rule without any built-in ability to increase the amount would suffer

the same issue as the current iteration of the rule with dated dollar values.

The general delegation limit is set by statute. Raising all agencies to the maximum general delegation limit of \$100,000 was considered but there are concerns about agencies' ability to properly manage procurements of that amount immediately. A phased approach, with the flexibility of the informal range, was deemed to be the most prudent approach to raising agency general delegations.

The current version of Rule .0314 did not provide any information regarding what Purchasing Agencies were required to provide in the solicitation documents. As this rule currently states the previous threshold amount it required amending. The current rule as written does not conform to the Rules Review Commission style requirements of a form rule; therefore, the only alternative was to amend the rule accordingly. In doing so, the Division found it best to break the newly provided information into two separate rules (.0314, and .0318). The newly revised Rule .0314 provides the Purchasing Agency with the template information required to be included in all solicitation documents and provides guidance as to when they are to be used. The newly created Rule .0318 establishes standard terms and condition language used in contracts and incorporates standard legal contract principles, constitutional provisions, statutes, and rules.

Rules .0319, .0320, and .0321 were created to provide additional clarity about the term of State contracts previously set forth in Rule .0301. The alternative to these rules would be to not create them, leaving ambiguity in the other rules. Clarity on contract terms, renewals, and extensions prevents unnecessary administrative and civil action, and allows the Division and Purchasing Agencies to obtain best value contracts for the State. Any possible alternative would be to alter the rule's stated year term for either the initial contract or any renewal or extension. The current set term limits were determined in Rule .0301 over 20 years ago and have been consistent policy since then. Three years has been chosen historically to allow a vendor time to implement a contract while giving the State flexibility to respond to market shifts. The rules as proposed set a contract limit with the requirement of SPO approval for any contract exceeding this limit. Shorter contract terms could result in more vendor turnover, more State resources used in the development of solicitations, and possible higher vendor prices. Longer contract terms would limit competition and prevent the State from taking advantage of advances in technology.

Appendix: Proposed Rule Text

1 01 NCAC 05A .0112 is proposed for amendment as follows:

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3 **01 NCAC 05A .0112 DEFINITIONS**

4 For the purpose of this Chapter:

- 5 (1) "Agency" or "Agencies" means all departments, institutions, boards, commissions, universities,  
6 community ~~colleges~~ colleges, or other units of the State, unless specifically exempted by statute.
- 7 (2) "Best and Final Offer" ("BAFO") is a document that memorializes the details of Negotiations  
8 between the State and a Vendor and mutually modifies the Vendor's Offer.
- 9 (3) "Best Value Procurement" shall have the same meaning as in G.S. 143-135.9.
- 10 (4) "Bid Value Benchmark" or "General Delegation" means the maximum authorized expenditure set  
11 pursuant to G.S. 116-31.10, G.S. 115D-58.14, or G.S. 143-52(a) and 143-53.1 for which an ~~agency~~  
12 Agency may contract to purchase Goods or Services without obtaining prior approval for the  
13 purchase from the Division.
- 14 (5) "Consultant Services" means contracted work or tasks performed by a Vendor or independent  
15 contractor possessing specialized knowledge, experience, ~~expertise~~ expertise, and professional  
16 qualifications to investigate assigned problems or projects and to provide counsel, review, ~~analysis~~  
17 analysis, or advice in formulating or implementing improvements in programs or Services. This  
18 includes improvements related to the organization, planning, directing, control, ~~evaluation~~  
19 evaluation, and operation of a program, Agency or department.
- 20 (6) "Clarification" means communications between the State and a Vendor that ~~may~~ occur after receipt  
21 of Vendor's Offer made for the purpose of eliminating irregularities, informalities, or apparent  
22 clerical mistakes in an Offer. A Clarification may also be used in order for the State to interpret an  
23 Offer or Offers or to facilitate the State's evaluation of all Offers. A Clarification shall not be used  
24 to cure material deficiencies in an Offer, alter the scope of an Offer, or to negotiate.
- 25 (7) "Competition" in purchasing exists when the available market for the Goods or Services to be  
26 acquired consists of more than one Responsible Vendor that is qualified and willing to submit an  
27 Offer.
- 28 ~~(8) "Competitive Range" means a rational grouping of the most competitive Offers as determined by~~  
29 ~~the Purchasing Agency.~~
- 30 ~~(9)(8)~~ (8) "Contract" means any type of agreement entered into by ~~State~~ Agencies, regardless of what it may  
31 be titled or called, setting out the obligations of the parties concerning a Procurement of Goods or  
32 Services.
- 33 (9) "Contract Term" means the time period in which a Contract is active and in effect.
- 34 (10) "Deficiency" means either a failure to meet a stated ~~requirement~~ Requirement or a combination of  
35 weaknesses in an Offer that increases the risk that a Vendor will be unable to meet its contractual  
36 obligations.
- 37 (11) "Division" means the Division of Purchase and Contract.

- 1 (12) "Electronic" means electrical, digital, magnetic, optical, ~~electromagnetic~~ electromagnetic, or any  
2 other similar technology.
- 3 (13) "Electronic Bid System" means the Division's Electronic system used variously to advertise  
4 Solicitations, notify Vendors, conduct Reverse Auctions, and post ~~contract~~ Contract awards.
- 5 (14) "Emergency Situations" means unforeseen circumstances that endanger lives, property, or the  
6 continuation of a vital program, as determined by the ~~purchasing~~ Purchasing Agency Director, and  
7 that can be rectified only by immediate purchases or rental of Goods or Services.
- 8 (15) "Extension" means an additional Contract Term not provided for in the Contract that is mutually  
9 agreed to by the State and all Vendor parties in a Contract amendment.
- 10 ~~(15)~~(16) "Goods" means any tangible property, including all equipment, materials, supplies and  
11 commodities. Unless the context requires otherwise, acquisition of printing shall be considered the  
12 purchase of Goods under these Rules.
- 13 ~~(16)~~(17) "Goods Contract" means any agreement involving the Procurement of Goods from a Vendor, but  
14 which may also have ancillary Services aspects.
- 15 (18) "Initial Contract Term" means the initial period for performance under a Contract after which the  
16 Contract will either terminate or be extended pursuant to a Renewal or Extension.
- 17 ~~(17)~~(19) "Negotiation" means oral or written communications in a waived or open competitive Procurement  
18 between the State and Vendor undertaken with the intent of allowing a Vendor to revise ~~their~~ its  
19 ~~Offers.~~ Offer. Revisions may apply to price, schedule, technical requirements, or other terms of the  
20 proposed ~~contract.~~ Contract. Negotiations are specific to each Offer and shall be conducted to  
21 maximize the State's ability to obtain best value based on the evaluation factors set forth in the  
22 Solicitation. Negotiations shall be memorialized in any resulting Contract.
- 23 ~~(18)~~(20) "Offer" means a bid, proposal, ~~BAFO~~ BAFO, or other proposition submitted in response to any  
24 Solicitation, Negotiation, or other approved acquisition process, as well as responses to solution-  
25 based Solicitations and government-Vendor partnerships.
- 26 ~~(19)~~(21) "Personal ~~Service~~ Services Contract" has the same definition as in G.S. 143-48.6(b). ~~Personal~~  
27 ~~Service Contracts may include Contracts with a doctor, dentist, attorney, architect, professional~~  
28 ~~engineer, scientist or performer of the fine arts or similar professions.~~ A Personal ~~Services Contracts~~  
29 ~~are~~ Services Contract is a type of Service Contract.
- 30 ~~(20)~~(22) "Pressing Need" means a need arising from unforeseen causes outside the State's control, including  
31 delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of  
32 work, which can be satisfied only by immediate purchase or rental of Goods or Services.
- 33 ~~(21)~~(23) "Price" means the amount paid by the State to a Vendor for Goods or Services.
- 34 ~~(22)~~(24) "Procurement" means the process of acquiring Goods or Services.
- 35 (25) "Professional Services" means the contracted work or tasks performed by a Vendor or independent  
36 contractor possessing specialized knowledge, experience, expertise, and professional qualifications,  
37 who provides ongoing Services. A Professional Services Contract is a type of Service Contract.

1 ~~(23)~~(26) "Progressive Award" means an award ~~of~~ for portions of a definite quantity requirement to more than  
2 one Vendor. Each portion is for a definite quantity and the sum of the portions is the total quantity  
3 procured. A Progressive Award may be in the Purchasing Agency's best interest when awards to  
4 more than one Vendor for different amounts of the same item are needed to obtain the total quantity  
5 or the time or times of delivery required.

6 ~~(24)~~(27) "Public Funds" means any amount received, held, ~~disbursed~~ disbursed, or otherwise subject to or  
7 accounted for in accordance with the State Budget Act and amounts used to acquire Goods and  
8 Services that are required to be purchased in accordance with Article 3 of Chapter 143 of the General  
9 Statutes.

10 ~~(25)~~(28) "Purchasing Agency" or "Purchaser" means the Agency that issues a purchase order or otherwise  
11 acquires Goods or Services through a purchasing process.

12 ~~(26)~~(29) "Recalled Bid" means a Bid that is rescinded by the Vendor after the bid opening but prior to a  
13 contract being awarded.

14 (30) "Renewal" means an optional, typically annual, term immediately following the Initial Contract  
15 Term provided for in the Contract that can be exercised as of right by the State.

16 ~~(27)~~(31) "Responsible Vendor" means a Vendor who demonstrates in its Offer that it has the capability to  
17 perform the requirements of the Solicitation.

18 ~~(28)~~(32) "Responsive Offer" means an Offer that conforms to the Requirements of the Solicitation.  
19 ~~Solicitation in all respects to be considered by the State for award.~~

20 ~~(29)~~(33) "Requirement" is a provision of a Solicitation and any resulting Contract ~~which~~ that prescribes the  
21 nature or details of a standard, ~~process~~ process, or procedure that must be complied with by the  
22 Vendor before any further evaluation of the Offer is conducted by the State.

23 ~~(30)~~(34) "Sealed Offer" means an Offer that remains unopened until the public opening time stated in the  
24 Solicitation.

25 ~~(31)~~(35) "Secretary" means the Secretary of the ~~NC~~ North Carolina Department of Administration.

26 ~~(32)~~(36) "Service Contract" means any agreement for compensation involving Services and requiring a  
27 particular or specialized knowledge, experience, ~~expertise~~ expertise, or similar capabilities in the  
28 Vendor. Contracts for Consultant ~~Services~~ Services, Professional Services, and Personal Services  
29 are also ~~types~~ examples of a Service Contract. A Service Contract may also involve the ancillary  
30 purchase of Goods.

31 ~~(33)~~(37) "Services" means the tasks and duties undertaken by a Vendor in a Service Contract to fulfill the  
32 ~~requirements~~ Requirements and Specifications of the Contract.

33 ~~(34)~~(38) "Signature" means a manual autograph, an Electronic ~~identifier~~ identifier, or an Electronic  
34 authentication technique, that is intended by the person using it to have the same force and effect as  
35 a manual signature.



1 ~~(35)~~(39) "Small Purchase" means the purchase of Goods and Services not covered by a Term Contract where  
2 the expenditure of Public Funds including Extensions and Renewals is equal to or less than the a  
3 Small Purchase Benchmark amount, amount, pursuant to 01 NCAC 05B .0301.

4 ~~(36)~~(40) "Solicitation" means a ~~Written or Electronic Invitation for Bids (IFB), Request for Quotations~~  
5 ~~(RFQ), Request for Proposal (RFP), Best and Final Offer (BAFO), Request for Information (RFI)~~  
6 ~~or other such documents used to solicit to request or invite Vendor Offers, or to request information~~  
7 ~~regarding the acquisition of Goods and Services, including all mutually agreed attachments and~~  
8 ~~items incorporated by reference, through the use of Solicitation Documents.~~

9 (41) "Solicitation Documents" means a Written or Electronic (a) Invitation for Bids (IFB); (b) Request  
10 for Quotations (RFQ); (c) Request for Proposals (RFP); (d) Best and Final Offer (BAFO); or (e)  
11 other documents to invite Vendor Offers, including all mutually agreed attachments and items  
12 incorporated by reference therein.

13 ~~(37)~~(42) "Specification" means any description of the physical or functional characteristics of, or the nature  
14 of, the Goods or Services to be procured.

15 ~~(38)~~(43) "SPO" means the State Procurement ~~Officer.~~ Officer or the Director of the Division.

16 ~~(39)~~(44) "Tabulation" means a list of Vendors submitting Offers in response to a particular Solicitation and,  
17 if applicable, the prices ~~Offered~~ offered as allowed under G.S. 143-52(a).

18 ~~(40)~~(45) "Technical Offer" means a proposal by a Vendor in response to the Solicitation, absent the price  
19 content.

20 ~~(41)~~(46) "Term Contract" is a binding agreement between purchaser and seller to buy and sell certain  
21 ~~commodities, printing, or services~~ Goods or Services at certain ~~prices~~ prices, for an agreed Contract  
22 Term, and under stipulated specific terms and conditions.

23 ~~(42)~~(47) "Total Cost of Ownership" means a summation of all purchase, operating, and related costs to be  
24 expended during the projected lifetime of a Good or Service or both.

25 ~~(43)~~(48) "Vendor" means a contractor, supplier, bidder, company, independent contractor, firm, corporation,  
26 partnership, ~~individual~~ individual, or other entity submitting a response to a Solicitation.

27 ~~(44)~~(49) "Voided Bid" means an Electronic bid that was submitted by a Vendor in connection with an  
28 Electronic Solicitation that has been cancelled, the bids voided and not opened electronically.

29 ~~(45)~~(50) "Weakness" means a flaw in the Offer that increases the risk of unsuccessful contract performance.

30 ~~(46)~~(51) "Withdrawal" or "Withdrawn Bid" means a Bid that is rescinded by the Vendor prior to the bid  
31 opening.

32 ~~(47)~~(52) "Written" or "Writing" means a communication recorded in a medium of expression that can be  
33 preserved, read, retrieved, and reproduced for an indefinite period of time, including information in  
34 a form that is electronically transmitted and stored.

35  
36 *History Note:* Authority G.S. 143-48.3; 143-48.6; 143-49; 143-52; 143-53; 143-53.1; 143-57; 143-135.9;  
37 *Eff. February 1, 1996;*

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*Amended Eff. April 1, 1999;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;*

*Amended Eff. October 1, 2019.*

*Amended Eff. \_\_\_\_\_*

1 01 NCAC 05B .0301 is proposed for amendment as follows:

2  
3 **SECTION .0300 - PROCUREMENT AUTHORIZATION AND PROCEDURES**

4  
5 **01 NCAC 05B .0301 CONTRACTING REQUIREMENTS**

6 Except where a waiver, special delegation, exemption, or an emergency purchase is permitted ~~by rule, under Rule~~  
7 .1401, .1505(b), or Section .1600 of this Subchapter, all purchases involving the expenditure of ~~public funds- Public~~  
8 Funds made by ~~universities and other agencies for commodities, services and printing, an Agency for Goods or~~  
9 Services not covered by ~~statewide term contracts, Statewide Term Contracts,~~ shall comply with the ~~following~~  
10 delegations and procedures: provisions of Rule .0314 of this Subchapter, and the following:

11 (1) ~~Small Purchases. Purchases:~~ A small purchase is defined as the purchase of commodities, services  
12 ~~or printing, not covered by a term contract, involving an expenditure of public funds of five thousand~~  
13 ~~dollars (\$5,000) or less. The executive officer of each agency, or his designee, shall set forth, in~~  
14 ~~writing, purchasing procedures for making small purchases. The using agency shall award contracts~~  
15 ~~for small purchases. The SPO may require a copy of the small purchase procedures be sent to the~~  
16 ~~Division of Purchase and Contract.~~

17 (a) A Small Purchase, as defined in 01 NCAC 05A .0112, is the purchase of Goods and  
18 Services, where the total Contract value, including the amounts of Extensions and  
19 Renewals, is equal to or less than the Small Purchase Benchmark as set by the SPO.

20 (b) The small purchase benchmark value shall be \$25,000 in 2021 dollars. The SPO shall  
21 adjust the small purchase value for inflation in June of odd-numbered years using the  
22 Consumer Price Index for All Urban Consumers (CPI-U), all items in US city average, not  
23 seasonally adjusted. The inflation change shall be calculated by dividing the CPI-U index  
24 value in May of the current year by the index value from May of two years prior.

25 (c) The executive officer of each Agency, or his or her designee, shall establish written  
26 procedures for making Small Purchases. The procedures shall be made available to the SPO upon  
27 request.

28 (d) The Purchasing Agency shall award contracts for Small Purchases.

29 (e) An Agency or university may advertise Small Purchase Solicitations through the Electronic  
30 Bid System maintained by the Division and may utilize Division Solicitation Documents  
31 as specified in Rule .0314 of this Section.

32 (2) ~~Purchases Governed by General Delegation or Statute:~~ Informal Bidding Procedure.

33 (a) Where the total Contract value, including the amounts of Extensions and Renewals,  
34 involving an expenditure of Public Funds exceeding the Small Purchase Benchmark in  
35 Paragraph (1) of this Rule, and up to the Bid Value Benchmark For purchases made by a  
36 university or agency involving an expenditure of public funds over five thousand dollars  
37 (\$5,000), up to the benchmark established for a university under the provisions of G.S.

1 116-31.10, and up to the general delegation or the General Delegation limit for agencies  
2 an Agency established by the SPO under the provisions of ~~G.S. 143-53(a)(2); G.S. 143-~~  
3 53(a)(2) and G.S. 143-53.1, the following procedure shall be utilized:

4 (i) Competition shall be solicited but the solicitation of Sealed Offers is not required.  
5 Agencies may utilize the Division's Electronic Bid System to advertise  
6 Solicitations subject to this Subsection or to solicit Vendor Offers.

7 (ii) Division Solicitation documents- Documents requesting or inviting offers shall be  
8 issued; and

9 (iii) Division Solicitation documents- Documents and any resulting Contract shall  
10 include standard language, including Contract language and terms and conditions  
11 as set forth in Rule .0314 and .0318 of this Section, and may be found on the  
12 Division's webpage, published by the Division of Purchase and Contract on its  
13 home web page, unless prior written approval is obtained from the Division for  
14 unusual requirements. If additional Additional terms and conditions are used, they  
15 used shall not conflict with the Division's standard terms and conditions.  
16 conditions, unless prior written approval is obtained from the Division for unusual  
17 requirements; and

18 (iv) ~~Mailing lists, if available from the Division of Purchase and Contract, may be~~  
19 ~~requested and used in addition to mailing lists maintained by the university or~~  
20 ~~agency for the purpose of soliciting competition.~~

21 solicitations through the Division of Purchase and Contract for the following purchases:

22 (i) ~~Agencies: For purchases involving an expenditure of public funds exceeding ten~~  
23 ~~thousand dollars (\$10,000), up to the general delegation limit for an agency~~  
24 ~~established by the SPO under the provisions of G.S. 143-53(a)(2);~~

25 (ii) ~~Universities: For purchases involving an expenditure of public funds exceeding~~  
26 ~~twenty five thousand dollars (\$25,000), up to the benchmark established for a~~  
27 ~~university under the provisions of G.S. 116-31.10.~~

28 ~~Agencies and universities may advertise solicitations on smaller dollar purchases through the Division of Purchase~~  
29 ~~and Contract.~~

30 (b) Contracts for purchases valued less than a university's Bid Value Benchmark or an  
31 Agency's General Delegation shall be awarded by the Purchasing Agency. The using  
32 agency shall award contracts under the statutory limit for universities and the general  
33 delegation for all other agencies.

34 (3) Formal Competitive-Bidding Procedure. Procedure: Where the total requirements for commodities,  
35 services or printing jobs involve an expenditure of public funds in excess of the expenditure  
36 benchmark established under the provisions of G.S. 116-31.10 or the general delegations established

1 by the SPO under the provisions of G.S. 143-53(a)(2), the competitive bidding procedure as defined  
2 in G.S. 143-52 shall be utilized as follows:

3 (a) Where the total Contract value, including the amounts of any Extensions and Renewals,  
4 involving an expenditure of Public Funds in excess of the Bid Value Benchmark  
5 established under G.S. 116-31.10, G.S. 115D-58.14, or the General Delegation established  
6 by the SPO under G.S. 143-53(a)(2) and G.S. 143-53.1, the competitive bidding procedure  
7 as defined in G.S. 143-52 shall be utilized as follows:

8 (i) Competition shall be solicited;

9 (ii) Division Solicitation Documents requesting or inviting offers shall be issued;

10 (iii) Solicitation Documents and any resulting Contract shall include contract language  
11 and terms and conditions as set forth in Rule .0314 and .0318 of this Section, and  
12 may be found on the Division's webpage, unless prior written approval is obtained  
13 from the Division for unusual requirements, such as for unique, complex, or  
14 highly technical Procurements. If additional terms and conditions for unusual  
15 requirements are used, they shall not conflict with the Division's standard terms  
16 and conditions, unless prior written approval is obtained from the Division;

17 (iv) an Agency shall provide to the Division a draft Solicitation Document for review  
18 and approval prior to posting on the Electronic Bid System. The Division shall  
19 review for compliance in accordance with G.S. 143-50.1 and Section .0300 of  
20 these Rules; and

21 (v) an Agency shall solicit Sealed Offers in accordance with this Subsection. After  
22 opening and completing the evaluation of Offers received, the Agency shall  
23 prepare and submit a written recommendation for award, along with a copy of all  
24 Offers received, to the Division for approval or other actions deemed necessary  
25 by the SPO. Notice of the Division's decision shall be sent to the Agency.

26 (b) An Agency shall advertise all Solicitations subject to this Subsection through the Electronic  
27 Bid System maintained by the Division.

28 (c) Contracts for purchases in excess of a university's Bid Value Benchmark or an Agency's  
29 General Delegation shall be awarded by the Purchasing Agency upon approval from the  
30 Division.

31 (a) ~~Sealed offers for commodities and printing shall be solicited by the Division of Purchase~~  
32 ~~and Contract via advertisement;~~

33 (b) ~~For service contracts, the universities and other agencies shall solicit sealed offers for their~~  
34 ~~university/agency in accordance with the rules established for Sub items (2)(a) and (b) of~~  
35 ~~this Rule. After opening and completing the evaluation of offers received, the agency shall~~  
36 ~~prepare a written recommendation for award, and if over the benchmark established under~~  
37 ~~G.S. 116-31.10 or the general delegations established by the SPO, shall submit a copy of~~

1 ~~all offers received and their recommendation of award or other action to the Division of~~  
2 ~~Purchase and Contract for approval or other action deemed necessary by the SPO~~  
3 ~~(Examples: cancellation, negotiation, etc.). Notice of the Division of Purchase and~~  
4 ~~Contract's decision shall be sent to the agency. The using agency shall award contracts for~~  
5 ~~services;~~

6 ~~(e) Sealed offers for statewide term contracts for commodities, printing and services shall be~~  
7 ~~solicited by the Division of Purchase and Contract via advertisement.~~

8 ~~(4) For each service contract handled by the agency, the agency shall prepare a task description of the~~  
9 ~~services and desired results. Task descriptions shall contain all of the following:~~

10 ~~(a) The date(s) of service (The contract shall not be for more than three years including~~  
11 ~~extensions and renewals, without the prior approval of the SPO for unusual requirements);~~

12 ~~(b) Detailed specifications or type and level of work required;~~

13 ~~(c) What the State shall furnish;~~

14 ~~(d) What the contractor shall furnish;~~

15 ~~(e) The method, schedule, and procedures for billing and payments; and~~

16 ~~(f) Other subject matters bearing on the conduct of the work.~~

17 ~~(4) The Procurement of Goods and Services shall be processed in the same manner.~~

18 ~~(5) Rules applying to service and printing contracts do not apply to local school administrative units or~~  
19 ~~community colleges.~~

20  
21 *History Note: Authority G.S. 143-49; 143-52; 143-53; 143-53.1;*

22 *Eff. February 1, 1976;*

23 *Readopted Eff. February 27, 1979;*

24 *Amended Eff. February 1, 1996; January 1, 1985;*

25 *Temporary Amendment Eff. February 15, 1998;*

26 *Amended Eff. April 1, 1999;*

27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*  
28 *2016.*

29 *Amended Eff. \_\_\_\_\_*  
30

1 01 NCAC 05B .0314 is proposed for amendment as follows:

2  
3 **01 NCAC 05B .0314 SOLICITATION DOCUMENTS**

4  
5 ~~a) An alternate procurement method to the Invitation for Bids (IFB) is a Request for Proposals (RFP). When using a~~  
6 ~~RFP, the rules of Subchapters 5A and 5B of this Chapter shall also apply. A RFP may also be handled as a two step~~  
7 ~~process in accordance with Rule .0305 of this Section.~~

8 ~~(b) For the purpose of Subchapters 5A and 5B of this Chapter, a solicitation document is defined as a written Request~~  
9 ~~for Quotes (RFQ), RFP or an IFB.~~

10 ~~(c) All agencies shall use the IFB or RFP document, whichever is applicable, when soliciting competition on contracts~~  
11 ~~valued over twenty five thousand dollars (\$25,000). The IFB and RFP solicitation documents used by agencies shall~~  
12 ~~require bidders or offerors to certify that each bid or offer is submitted competitively and without collusion.~~

13  
14 (a) In this Rule, the Division establishes standard Solicitation Documents for use in Contracts with the State. A  
15 Purchasing Agency shall use Division Solicitation Documents for purchases over the Small Purchase Benchmark.

16 (b) Division Solicitation Documents shall act as templates for the Purchasing Agency, including provisions for:

17 (1) Purchasing Agency contract lead name, contact information, Solicitation identifying information,  
18 and commodity codes;

19 (2) Purpose and background information such as:

20 (A) a description of the requested Goods or Services;

21 (B) a description of the Purchasing Agency's needs; and

22 (C) the intent of the solicitation;

23 (3) Contract Term information, including any Renewal period;

24 (4) General information regarding the Solicitation and bid process including:

25 (A) date and time when the bids will be opened;

26 (B) instruction as to how and when the Vendor is to respond to the Solicitation;

27 (C) the intended schedule of events and responsibilities of the Solicitation;

28 (D) instructions for submitting written questions to the Purchasing Agency;

29 (E) a list of content that should be included in the Vendor's response; and

30 (F) instructions on how to submit an alternate bid, if permitted;

31 (5) The method of award and bid evaluation process including:

32 (A) the number, type, and structure of the intended award;

33 (B) description of the evaluation criteria; and

34 (C) notice of State's option to negotiate in accordance with 01 NCAC 05B .0503;

35 (6) The terms of Vendor's performance, including:

36 (A) the terms of pricing, invoicing, and methods of delivery of the requested Goods or Services;

37 (B) the scope of work required by the Solicitation;

- 1                   (C) Specifications for the required Good or Service;
- 2                   (D) licensing requirements, as applicable;
- 3                   (E) statement of warranty or maintenance option; and
- 4                   (F) instructions for submitting samples, demonstrations, or descriptive literature;
- 5                   (7) Requirements and instructions for submitting references;
- 6                   (8) Notice of confidentiality and prohibited communications;
- 7                   (9) Contract administration requirements including:
- 8                         (A) post award contract management meetings and periodic status reports schedule;
- 9                         (B) review of Vendor performance based on measurable criteria and standards; and
- 10                      (C) dispute resolution; and
- 11                   (10) Terms and conditions approved by the Division pursuant to 01 NCAC 05B .0318.

12 (c) Provisions may be added or removed as required for certain Solicitations, such as those with unique, complex, or  
13 highly technical Specifications.

14  
15 History Note: Authority G.S. 143-49; 143-52(a); 143-53;

16 Eff. \_\_\_\_\_



1 01 NCAC 05B .0318 is proposed for adoption as follows:

2  
3 **01 NCAC 05B .0318**      **TERMS AND CONDITIONS**

4 (a) In this Rule, the Division establishes standard terms and conditions for use in Contracts with the State. Contracts  
5 with the State shall conform to standard legal contract principles, as well as the applicable requirements of  
6 Constitutional provisions, statutes, and rules.

7 (b) In addition to any contract provisions specifically required by an applicable statute or rule, standard terms and  
8 conditions should contain provisions relating to:

9        (1) The rights and responsibilities of the parties, including performance, payment terms, services terms,  
10        and condition and packaging of Goods;

11        (2) Traditional contract terms, including:

12                (A) default;

13                (B) termination;

14                (C) remedies;

15                (D) governing law;

16                (E) insurance coverage requirements;

17                (F) assignment and delegation;

18                (G) confidentiality;

19                (H) indemnification;

20                (I) conflict of terms;

21                (J) order of precedence;

22                (K) warranties;

23                (L) integration;

24                (M) amendments;

25                (N) no waiver;

26                (O) licensing provisions; and

27                (P) force majeure;

28        (3) Contract terms required in Contracts with the State such as protections for State data and property,  
29        availability of State funds, vendor advertising, access by the State Auditor to persons and records,  
30        electronic procurement and related fees, electronic records, applicability of taxes, sovereign  
31        immunity, compliance with non-discrimination statutes, and provisions relating to the utilization of  
32        federal funds; and

33        (4) Other provisions to protect the State from legal and other risks, as necessitated by current legal,  
34        market, and business conditions.

35 (c) Specific terms and conditions may be added or removed for certain Contracts, such as those with unique, complex  
36 or highly technical Procurements.

1 History Note: Authority G.S. 143-49; 143-50.1; 143-52; 143-53; 143-60; 143-135.9;  
2 Eff. \_\_\_\_\_

1 01 NCAC 05B .0319 is proposed for adoption as follows:

2

3 **01 NCAC 05B .0319 CONTRACT TERM**

4 (a) Except as allowed in G.S. 143-53(d), the Agency’s executive officer, or his or her designee, shall develop  
5 procedures consistent with this Chapter for approving Contract terms up to three years.

6 (b) Except as otherwise provided by statute, a Contract with a term that exceeds three years, including the Initial  
7 Contract Term and any Renewal and Extension, requires prior approval of the SPO.

8 (c) No Contract may contain a provision that provides for more than two one-year Renewals without prior approval  
9 of the SPO.

10 (d) SPO approval may be granted after consideration of the factors in Rule .0321 or when the SPO determines it is in  
11 the best interest of the State.

12

13 History Note: Authority G.S. 143-49; 143-52; 143-53; 143-135.9;

14 Eff. \_\_\_\_\_

15

1 01NCAC 05B .0320 is proposed for adoption as follows:

2

3 **01 NCAC 05B .0320 CONTRACT EXTENSIONS**

4 (a) Except as allowed in G.S. 143-53(d), any Extension beyond the term originally provided in the Contract that would  
5 result in a total Contract term that exceeds three years shall be by prior approval of the SPO., as provided in Rule  
6 .0319, after consideration of the factors set forth in Rule .0321.

7 (b) When an Agency determines, through consideration of the factors listed in Rule .0321, that a Contract Extension  
8 is in the best interest of the State, the Agency shall publicly post a notification of the Extension on the Electronic Bid  
9 System. The notification shall state for any Contract Extension:

- 10 (1) the original bid number;
- 11 (2) the awarded Vendor;
- 12 (3) the Contract start and end dates;
- 13 (4) the original Contract amount;
- 14 (5) the revised end date;
- 15 (6) an explanation of any pricing or minor scope modification to be included; and
- 16 (7) Agency and Contract Manager contact information.

17 (c) When in the best interest of the State, Vendors may be requested to extend the scheduled termination dates of  
18 Contracts. Extensions shall not result in a change in the prices stated in the original Contract unless agreed to by the  
19 Purchasing Agency in writing. Extensions that result in a total contract value that exceeds a Purchasing Agency's  
20 General Delegation or Bid Value Benchmark shall be submitted to the Division for approval.

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23 History Note: Authority G.S. 143-49; 143-52; 143-53; 143-135.9;

24 Eff. \_\_\_\_\_

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1 01 NCAC 05B .0321 is proposed for adoption as follows:

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3 **01 NCAC 05B .0321 FACTORS FOR CONTRACT EXTENSION OR RENEWAL**

4 (a) Before exercising a Renewal or seeking an Extension of a Contract as provided in this Section, the Agency shall  
5 consider and document in the official file, in accordance with 01 NCAC 05B .1903, the following factors:

- 6 (1) market research that reveals any changes in the relevant industry;
- 7 (2) the Vendor's past performance under the Contract;
- 8 (3) existence of new risk factors not present at award that increase the risk of unsuccessful contract  
9 performance;
- 10 (4) the presence and effectiveness of any performance-based contract provisions and metrics;
- 11 (5) the impact of transitioning to a new Vendor on the Agency's ability to meet the requirements of its  
12 programs; and
- 13 (6) any other requirements of State or federal statutes or rules.

14 (b) Subject to the limitations in Rule .0319 of this Section, an Agency's decision to renew or extend a Contract Term  
15 shall be approved by the Agency's head of Procurement.

16 (c) Contracts shall only be extended or renewed prior to the expiration of the last active Contract Term.

17 (d) An Agency shall obtain prior SPO approval to modify an existing Contract where the factors in (a) do not support  
18 a Renewal or Extension or where a Renewal or Extension would result in a total contract value that exceeds the  
19 Agency's General Delegation or Bid Value Benchmark.

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21 History Note: Authority G.S. 143-49; 143-52; 143-53; 143-135.9;

22 Eff. \_\_\_\_\_  
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