

I. INTRODUCTION

STATUTORY AUTHORITY AND NC ADMINISTRATIVE CODE

This Manual is intended to provide you with all the laws and rules (except those for IT) that must be followed in carrying out the responsibilities of the purchaser for your agency. It applies to the acquisition of all (except Information Technology/IT**) equipment, materials, supplies, printing, and services, through outright purchase, rental, lease, lease-purchase, or installment purchase. Community colleges are exempt from following these rules for all printing and services, and for all acquisitions which involve solely a rental or lease.

Community colleges are required by General Statute 115D-58.5 to purchase all supplies, equipment and materials by contracts made by or with the approval of the Division of Purchase and Contract of the Department of Administration.

In accordance with Article 3 of Chapter 143 of the General Statutes, the Secretary of the Department of Administration is responsible for administering the State's program for the acquisition and management, and disposal of personal property, as well as, the acquisition of services for state agencies. The Secretary is authorized and responsible for adopting and carrying out rules necessary to protect the public interest. The administration of this program has been delegated to the State Purchasing Officer (SPO) by the Secretary.

All agency purchasing personnel should have a copy of the N.C. Administrative Code Title 1 Chapter 5 ([P&C Home Page](#)) and Title 4 Chapter 21 ([ITS Home Page](#)), this Manual, and access to Article 3 and 3C of Chapter 143 and Article 3D of Chapter 147 of the General Statutes, to provide them with the resources needed to ensure they meet all requirements in conducting their day to day purchasing activities.

**All State agencies, except the General Assembly, the Judicial Department and the universities, are required to obtain their IT requirements through Information Technology Services in the Governor's Office.

**Community colleges, universities, the Judicial Department, and the General Assembly, may buy through ITS for their IT requirements.

COMPETITION

The State's purchasing program is based on sound competitive purchasing procedures and organized as a centralized purchasing system. The SPO is responsible for all aspects of purchasing commodities and contractual services by agencies, either directly or indirectly.

The SPO has direct responsibility for all acquisitions (except IT) over the established benchmarks set by statute that involve statewide term contracts and open market bids. Although agencies handle purchases under the established benchmarks and by delegation, the SPO is indirectly responsible for these purchases, since he must prescribe Rules for acquiring those needs.

Competition is the cornerstone around which public contracting is built. In its best form, it is a mirror of a free and open economy. North Carolina's purchasing program is built on the principle of competition. Where it is not sought, or obtained, the reason must be valid and must be documented as part of the public procurement file.

The importance of seeking competition exists at all levels of expenditure, not just in those solicitations above benchmarks. Below the benchmarks, the competitive element is just as important and can be sought through some form of competitive solicitation. All agency purchasing personnel must maintain an awareness of the need for and value of competition in every procurement action.

The ability to foster competition is a skill required of all agency purchasing personnel. Fostering competition is an attitude more than a procedure or mechanism. It is reflected in the way specifications are written, in searching for new sources of supply, in attempting to make procurement documents simple and inviting, and in everyday courteousness shown to prospective suppliers and contractors.

Price should not be considered as the absolute in the competitive arena. The lowest responsive and responsible bid is the benchmark in North Carolina's purchasing program. The lowest responsive and responsible price allows consideration of many factors, such as, terms and conditions, delivery schedules and lead times, types and degrees of service required, inspection and testing procedures, transportation and delivery costs, warranties and guarantees required, etc. The purchaser's responsibility is to evaluate all the factors included in the procurement document to determine the lowest responsive and responsible offer from all offers received.

As purchasers, we are entrusted by the taxpayers of this State to spend the monies allotted us in an efficient and effective manner. To accomplish this we must work jointly to promote and protect the basic fundamentals of fair and open competition upon which our State's purchasing program is built. In doing this, the integrity of our purchasing program, statewide, is paramount in maintaining this trust.

II. GLOSSARY

DEFINITIONS

AGENCY: All departments, institutions, boards, commissions, universities, Purchase & Contract, or other units of the State, and community colleges; unless specifically exempted in this Manual by reference. For the purpose of identifying a special responsibility constituent institution, as designated by the University Board of Governors, just the name "university(ies)" shall be used to distinguish any difference in the rules.

AGENCY SPECIFIC TERM CONTRACT: A term contract for use by a specific agency. Depending on the dollar value of the contract, it may be handled by P&C or the agency.

BEST VALUE PROCUREMENT: The terminology used in G.S. 143-135.9 to identify the method required for purchasing information technology commodities and services.

COMMODITY: Any equipment, materials, or supplies. Also referred to in this manual as goods and items.

COMPETITION: The fair and open solicitation of offers from more than one source; the receipt of offers from more than one source. Competition must be reasonable and adequate for the amount of the expenditure and the specific requirement.

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

CONTRACTUAL SERVICE: When an independent contractor performs services requiring specialized knowledge, experience, expertise or similar capabilities for a State agency for compensation from agency funds. The services may include (by way of illustration, not limitation) services such as, maintenance of buildings or equipment, auditing, film production, employee training and food service, provided that the service is not primarily for review, analysis or advice in formulating or implementing improvements in programs or services (in which case rules relating to Consultant Contracts shall be applicable).

DELEGATIONS:

- **General Delegation:** The authority granted by the SPO for an agency to handle purchases made under a certain dollar amount, in accordance with the guidelines in this manual.
- **Special Delegation:** The authority granted by the SPO for an agency to handle a specific or special purchase, where it would serve no practical purpose for the purchase to be handled by P&C.

EMERGENCY: A situation which endanger lives, property, or the continuation of a vital program and which can be rectified only by immediate on-the-spot purchase (or rental) of equipment, supplies, materials, printing, or contractual services (*also see Pressing Need*).

HUB (Historically Underutilized Business): Any one of the following: a minority-owned business, a female-owned business, a disabled owned business, a disabled business enterprise, a non-profit workshop for the blind or severely disabled.

INFORMATION TECHNOLOGY (IT): Electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes.

INSTALLMENT PURCHASE: A contract in which the agency's established periodic payments are applied to fulfill the payment obligations for ownership of the commodity. Used when ownership of commodity at time of possession is intended.

INVITATION FOR BIDS: A formal solicitation document, usually in a standardized format. This document or the RFP is required to be used for competitive procurements over \$25,000. Normally used for larger, advertised competitive procurements for commodities.

LEASE: A contract conveying from one to another the use of a commodity for a designated period of time in return for established periodic payments. Does not contain an option or an obligation to purchase.

LEASE-PURCHASE: A contract conveying from one to another use of a commodity for a designated period of time in return for established periodic payments, with an option or obligation to purchase the commodity. Used when outright ownership is uncertain or when it is the intent to delay ownership.

NEGOTIATION: The act of making a purchase when all offers have been rejected, or when there is justification for waiving the competitive process, or when an emergency or pressing need arises.

OFFER: This term may refer to a proposal, quote, or bid submitted in response to a Request for Proposals, Request for Quotations, Invitation for Bids, or Negotiation.

OFFEROR: Company, firm, corporation, partnership, individual, etc. submitting a response to a solicitation document or in response to a negotiation.

OPEN MARKET CONTRACT: A contract for the purchase of a commodity or contractual service not covered by a term contract, usually for a definite quantity on a single order.

PERSONAL SERVICE: Services provided by a professional individual (person) on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, scientist, or performer of the fine arts and similar professions; the exemption applies only if the individual is using his/her professional skills to perform a professional task; a personal service may also be a consultant service, in which case consultant contracting procedures shall be followed.

PRESSING NEED: A need arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, and which can be rectified only by immediate on-the-spot purchase (or rental) of equipment, supplies, materials, printing, or contractual services (*also see Emergency*).

PURCHASE: The solicitation of, and acceptance of, an offer to (1) provide a service, or (2) lease or rent a commodity, or (3) sell a commodity outright, or (4) sell a commodity through a lease purchase or installment purchase contract.

RENTAL: A contract for the right to use a commodity or product for a period of time, usually with payments made at intervals over the period of use, and normally providing for short notice of cancellation.

REQUEST FOR PROPOSALS: A solicitation document. This document or the IFB is required to be used for competitive procurements over \$25,000. Normally used for larger, advertised competitive procurements for services. It is an alternate acquisition method to the IFB. A RFP may also be handled as a two step process.

REQUEST FOR QUOTES: A solicitation document. Normally used for smaller, non-advertised competitive procurements (may include e-quote).

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

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

SMALL PURCHASE: The purchase of an item, printing job, or contractual service for \$5,000 or less.

SOLE SOURCE: When an item or service is available from only one known source of supply. This usually requires research to confirm and documentation for the file.

SOLICITATION DOCUMENT: A written Request for Quotation, Request for Proposals, or an Invitation for Bids.

STATEWIDE TERM CONTRACT: A term contract handled by P&C for all agencies, unless exempted by statute, rule, or special term and condition specific to that contract.

TERM CONTRACT: A contract generally intended to cover all normal requirements for a commodity or contractual service for a specified period of time based on estimated quantities only. Sometimes referred to as "requirements contract" or "indefinite quantity contract".

ABBREVIATIONS

Abbreviation	Meaning
Secretary	Secretary of the Department of Administration
SPO	State Purchasing Officer
P&C	Purchase and Contract Division, Department of Administration
HUB	Historically Underutilized Business
IFB	Invitation for Bids

Abbreviation	Meaning
IT	Information Technology
RFQ	Request for Quotes
RFP	Request for Proposals

III. ETHICS / INTEGRITY / RESPONSIBILITY

ETHICS

Ethics and ethical practices are a major concern in the realm of public purchasing today. While laws and rules mesh to provide a mechanism for public purchasing, only people can make it work. In purchasing, as in all fields, there are values of pride and worth, there are standards and ideals, and there are specifics of conduct and performance. Impediments to the process must be detected early and safeguards provided at all levels. This applies both to purchasing personnel and the vendor community.

It becomes imperative, therefore, that all public purchasing personnel be entirely cognizant of the necessity for ethical behavior. It takes only the slightest hint of impropriety to cast doubt on behavior. Sometimes, it may be even more of a perception than an actual event.

INTEGRITY

Fairness and impartiality in all phases of the process are an essential ingredient in public purchasing. Dealings with vendors and peers must be open, honest, and objective.

Like all service functions, purchasing's justification is the quality of the service it renders. The process cannot be both effective and self-serving; the two are incompatible. In the case of public purchasing, utmost fairness is required in expending public funds. The result of favoritism extended to either a user or seller is the same. The practice is not permissible. No matter how strongly a user may prefer a particular product over others, equivalent products must be given every reasonable consideration. We must commit and adhere to fair and open competition.

Integrity is a principal stock in trade for the public purchaser. Integrity is manifested by fairness, openness, and impartiality and can be tarnished by even the slightest appearance of impropriety. Once this occurs, it is very difficult to regain.

RESPONSIBILITY

If any agency contracts for the purchase or lease of any commodities, printing or services contrary to statutes, or rules adopted thereunder, such contract shall be void and of no effect. In addition, the Executive Officer of that agency shall be personally liable for the costs thereof.

IV. DELEGATIONS/EXEMPTIONS

GENERAL DELEGATIONS (BENCHMARKS)

Under G.S. 143-53(a)(2) and G.S. 116-31.10, the maximum authorized dollar limits (delegation/benchmark) for purchases of commodities, printing, and services by agencies are:

- All agencies (except universities) have a delegation of \$10,000, unless an increase is approved by the SPO, up to a maximum of \$25,000.
- Each university's benchmark is set by the University Board of Governors, up to a maximum of \$500,000.

Although the purchasing benchmarks for universities are set by the University Board of Governors, the rules applying to purchases made under those benchmarks are governed by the rules adopted by the Secretary. 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 herein as a "general delegation" or "delegation".

All transactions over the general delegations must be handled or delegated by the SPO. The procedures for handling purchases under the general delegation are covered under Section "Purchasing Methods". There are normally two types of delegations - general and special. The differences between these and the conditions under which they are delegated are explained herein.

Each agency should have a person(s) designated to be responsible for the purchasing functions of the agency. It is recommended that just one office have this responsibility, to ensure consistency and accountability for all expenditures.

An agency shall not divide requirements in order to keep them under the general delegation, and thereby avoid the Rules requiring the applicable method for competition.

Note: Consultant Services are handled differently. See the Section entitled *Consultant Services*.

When the dollar amount of the expenditure is under an agency's general delegation, the agency is authorized to acquire commodities, printing and contractual services, by purchase, rent, lease, lease purchase, or installment purchase, subject to the following Rules:

1. All commodities and contractual services covered by term contracts must be purchased in accordance with the instructions of those contracts. In situations where a special type item or contractual service is needed for a particular application, the State Purchasing Administrator who handled the term contract should be consulted for appropriate action.
2. The Executive Officer of each agency shall set forth, in writing, purchasing procedures for making small purchases. The SPO may require that a copy of this written procedure be sent to P&C. For definition of small purchase see section V, "Purchasing Methods".
3. The specific rules which apply to the procurement process for expenditures over \$5,000 are given in Section V.
4. Agencies must be sure they do not exceed their 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 on a repetitive basis. The contract value of the original contract period or the renewal option period(s), individually, must be within your delegation.
5. The solicitation document shall include terms and conditions and any other consistent contract language, issued by the SPO, unless prior approval from the SPO is granted.
6. Agencies should monitor purchases 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.
7. Awarding of contracts under the general delegation shall be the responsibility of the using agency.
8. Rules applying to service and printing contracts do not apply to community colleges.

SPECIAL DELEGATIONS

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

Some special delegations apply to all agencies and some are agency specific. All delegations shall be in writing and made a matter of record. For special delegations applying to all agencies, the publishing of them in this manual is the written approval. Unless otherwise specified by the SPO, special delegations are subject to all of the following conditions:

1. All commodities and contractual services covered by term contracts must be purchased in accordance with the instructions of each term contract.
2. Competition must be solicited, where available. If competition is not available, the reason(s) must be documented in the procurement file.
3. Agencies are required to issue their own solicitation documents. This shall also apply to a waiver.

4. The solicitation document shall include terms and conditions and any other consistent contract language, issued by the SPO, unless prior approval from the SPO is granted.
5. All transactions shall be documented.
6. Awarding of contracts under a special delegation shall be the responsibility of the agency's Executive Officer. However, the SPO may require that offers received under such delegations be sent to P&C for determination of the successful contractor.
7. Any controversial matter arising from a special delegation must be brought to the attention of the SPO.
8. Specific delegations may be subject to additional conditions as determined by the SPO. These conditions shall be submitted to the agency in writing.
9. P&C shall periodically review its special delegations to ascertain the availability of these items or services and their continued suitability for delegation.

LIST OF SPECIAL DELEGATIONS

These delegations apply to all agencies; however, competition shall be sought where available.

1. **Repairs (Non-Construction)**: Purchasing authority for repairs handled by private sector personnel, regardless of cost, is delegated to the using agency. Where materials are being purchased for a repair and using agency personnel will perform the needed repair, the purchase of the materials must be handled in accordance with normal purchasing procedures outlined in this manual.
 - a. ***NOTE:*** *Where any structural changes are to be made in or to an agency-owned building, the proposed project should be handled in accordance with construction statutes and rules applicable to each agency. (See G.S. 143-129 concerning building repairs and renovation)*
2. **Feed**: Authority to purchase feed, including special ingredients, is delegated to using agencies which are engaged in the feeding of animals, poultry and fish.
3. **Animals, Poultry and Fish**: Authority is delegated to purchase animals, poultry and fish.
4. **Athletic Apparel**: Authority to purchase athletic apparel is delegated to using agencies. In the purchase of athletic apparel, there are certain considerations regarding the safety of the athlete which should remain within the control of the using agency officials.
5. **Maintenance of Aircraft**: All aircraft maintenance and repair (see Repairs / Non-Construction) whether unexpected or scheduled, is covered by this delegation. This does not include the purchase of equipment, materials, or supplies for the aircraft that is separate and apart from the maintenance or repair being performed.
6. **Playground Equipment (Structures)**: Where the purchase of playground equipment is being handled as a commodity purchase vs. a construction project, the authority to purchase such playground equipment and its installation is delegated to the using agency.
7. **Ready-Mix Concrete**: Where the purchase of ready-mix concrete is being handled as a commodity purchase vs. a construction project, the authority to purchase such ready-mix concrete is delegated to the using agency.

EXEMPTIONS

1. Except as provided in (3), it is not mandatory for the items and services listed below to be purchased through P&C; however, competition must be sought where available.
 - a) Purchase of liquor;
 - b) Perishable (fresh / frozen) articles such as meats, fruit, vegetables, fish, poultry and eggs;

- c) Published material produced by others, such as newspapers, magazines, pamphlets, manuscripts, books, maps, charts, globes, film, filmstrips and recordings (including tapes);
 - d) Services provided by individuals by direct employment contracts with the state;
 - e) Public utility services (gas, water and electricity);
 - f) Services provided which are subject to published tariff rates as established by the State Utilities Commission;
 - g) Services which are merely incidental to the purchase of supplies, materials or equipment such as installation services;
 - h) Contracts for construction of and structural changes to public buildings;
 - i) Personal services provided by a professional individual (person) on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, scientist or performer of the fine arts and similar professions. The exemption applies only if the individual is using his/her professional skills to perform a professional task. A personal service may also be a consulting service, in which case Consultant Services rules apply.
 - j) Services provided directly by an agency of the state, federal or local government, or their employees when performing the service as a part of their normal governmental function.
2. In addition to products and services exempted by Statute, the SPO may exempt other products and services from purchase through P&C.
 - a. That competition will not enhance the price that the State would receive for the product or service; and,
 - b. That competition will not enhance the quality of the product or service that the State would receive.
 3. Soliciting competition for bakery products and dairy products shall be handled by the agency in accordance with Section V, "Purchasing Methods", regardless of the dollar value of the proposed contract, but awarded through P&C if over the agency's delegation.

V. PURCHASING METHODS

BASIC

When the dollar amount of the expenditure is under an agency's delegation, the agency is authorized to acquire commodities, printing, and contractual services, by purchase, rent, lease, lease purchase, or installment purchase, subject to the procedures herein.

Once a need is determined by a user at an agency, the user should submit a requisition through the agency's purchasing office. The commodity, printing, or contractual service needed will usually fall under one of the categories given below (For consultant services, See Section XI, "Consultant Services").

- Small Purchases (Section V)
- Open Market Solicitations (Section V)
- Statewide Term Contract (Section V)
- Agency Specific Term Contract (Section V)
- Waiver of Competition (Section V)
- Emergency or Pressing Need (Section V)
- Correction Preference (Section V)

- Nonprofit Work Centers for the Blind and the Severely Disabled (Section V)
- Special Delegation (Section IV)
- Exemptions (Section IV)

SMALL PURCHASES

A small purchase is defined as the purchase of commodities, services or printing, not covered by a term contract, involving an expenditure of public funds of five thousand dollars (\$5,000) or less. The executive officer or his designee, of each agency shall set forth, in writing, purchasing procedures for making small purchases. The benchmark for small purchases may be set at less than \$5,000 at the discretion of the agency's executive officer or designee, but small purchases may not exceed \$5,000. The awarding of contracts for small purchases shall be the responsibility of the using agency. The SPO may require a copy of the small purchase procedures be sent to the Division of Purchase and Contract.

OPEN MARKET SOLICITATIONS

An open market solicitation is for the purchase of a commodity, printing, or service not covered by a term contract. Open market contracts are to be established in accordance with the procedures in Section V-7 where competition procedures are defined.

TERM CONTRACTS

A “term contract” is a contract intended to cover normal requirements for a commodity, printing, or contractual service for a specified period of time based on predicted usage. It is also referred to sometimes as a “requirements contract” or “indefinite quantity contract”. Term contracts are to be established under the procedures given in Section V, “Purchasing Methods”.

There are two basic types of term contracts:

- “Statewide term contract” is established by P&C for agency use.
- “Agency specific term contract” is established by P & C for use by an agency when a commodity, printing or service is not covered by a statewide term contract, and the contract value exceeds the agency’s delegation.

Commodities on statewide term contracts are competitively bid. Some considerations in establishing statewide term contracts are as follows:

- Items most commonly used or purchased by the state;
- Obtain lower prices through volume discounts;
- Transportation costs are included in the pricing;
- For some items, standards have been established and items have been tested;
- Warranties may be included in the contract;
- On-line catalogs are available within E-Procurement for processing efficiency.

Every statewide term contract and agency specific term contract has different information pertinent to that specific contract. **READ EACH CONTRACT CAREFULLY PRIOR TO ORDERING.**

Most of the statewide term contracts for commodities specify a minimum and maximum quantity (or dollars). Orders below the minimum shall be obtained in accordance with agency procurement procedures. Orders that exceed the maximum quantity must be forwarded to P&C for processing. For needs that exceed the maximum, P&C will determine if the order should be placed with the contractor at the contract price, negotiate the price with the contractor, or solicit new offers for the requirement. In all cases, follow the instructions, which will vary by contract or call the P&C purchaser for guidance.

If a waiver, emergency purchase or pressing need arises, a term contract supplier should be given the opportunity to satisfy the requirement, if the requirement is covered by a term contract and time permits such action.

WAIVERS and EMERGENCIES

Waiver of Competition

Under certain conditions, and if deemed to be in the public interest, competition may be waived. Conditions permitting waiver include, but are not limited to, the following situations:

1. Performance or price competition is not available;
2. Needed product or service is available from only one source of supply;
3. Emergency or pressing need 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. Product or service is needed for the 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. Items 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 where a purchase is being made and a satisfactory price is available from a previous contract;
17. Requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s);
18. A used item(s) is available on short notice and subject to prior sale;
19. Product or service is available from another governmental agency.

Although competition may be waived for proper cause, its use is required wherever practicable. Where waiver is contemplated, agencies may negotiate with a potential vendor in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions, when the expenditure is less than the agency's respective delegation. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language, terms and conditions issued by P&C.

A solicitation document requesting or inviting an offer(s) shall be issued by the agency, including standard language, terms and conditions issued by P&C. In instances where there is a question regarding terms and conditions, contact P&C. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding an agency's benchmark or delegation, but are subject to the approval of P&C, except where otherwise permitted by rule. If the dollar value of an agency contract exceeds ten thousand dollars (\$10,000), but is less than the agency's delegation, and the agency contemplates waiver of competition, then prior review by the Division is required, except when it qualifies as an emergency and time does not permit prior review. The agency shall submit their request for this review via a requisition (or in some other acceptable format), which shall include a description of the requirement, the amount of the expenditure, the recommended vendor, and the justification for the waiver; and shall provide any additional documentation and justification deemed necessary by the SPO for conducting a thorough review. This documentation must be included in the purchase file as a matter of public record and be suitable for review by auditors, public, vendors, and other interested parties.

Emergency and Pressing Needs

An agency may make purchases of commodities, printing or services in the open market in cases of emergency or pressing need. For this purpose, 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. Emergencies are defined as situations which endanger lives, property or the continuation of a vital program and which can be rectified only by immediate on-the-spot purchases or rental of commodities, printing or services.

Agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language, terms and conditions issued by P&C. In instances where there is a question regarding terms and conditions, contact P&C.

When emergency or pressing need action is necessary, and the expenditure is over the agency's delegation, prior approval shall be obtained from P&C if time permits.

If the expenditure is over \$10,000 for agencies (regardless of their delegation), or over a university's delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to P&C. P&C shall report such purchases of commodities and printing to the Board of Award as a matter of record.

PREFERENCES

1. Nonprofit Work Centers for the Blind and the Severely Disabled

Agencies may purchase goods and services directly from a nonprofit work center for the blind and severely disabled as long as:

- a. The purchase of goods does not exceed the agency delegation, and
- b. The goods or services are not available under a term contract, and
- c. The goods or services must be of suitable price and quality, as determined by the agency.

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

2. Department of Correction

North Carolina has a preference statute (G.S. 148-70) that controls the sale of prison industry products and prohibits their sale to the private sector. All agencies shall give preference to Department of Correction products in purchasing articles, products, and commodities which are needed and which are manufactured or produced within the State prison system and offered for sale to them by the Department of Correction. This preference requirement also applies to all community colleges (except printing). Delegation limits do not apply to products purchased from Correction Enterprises.

Products available from the private sector and also offered by Correction Enterprises, including those on term contracts, shall be purchased from the private sector only when it is determined that the Correction Enterprises product will not satisfy the requirement or will not be available when needed. The purchase file should contain documentation from Correction Enterprises stating that the item(s) cannot be supplied. Competitive bidding shall not apply to articles or commodities available from Correction Enterprises.

Correction Enterprises is required to keep the price of products substantially in accord with that paid by governmental agencies for similar products of equivalent quality.

PROCEDURES and RECORDS

Except where a waiver, small purchase, special delegation, exemption, emergency or a pressing need is permitted by rule, all purchases involving the expenditure of public funds made by agencies for those commodities, services and printing, not covered by statewide term contracts, shall comply with the following delegations and procedures. The two exceptions to this are when an agency buys from either the Department of Correction or from a Nonprofit Work Center for the Blind and the Severely Disabled (See Section V, "Purchasing Methods").

For purchases made by an agency involving an expenditure of public funds over \$5,000, up to the general delegation limit:

1. Competition shall be solicited;
2. Solicitation documents requesting or inviting offers shall be issued; and
3. Solicitation documents shall include standard language, including terms and conditions issued by P&C, unless prior written approval is obtained from P&C. If additional terms and conditions are used, they shall not conflict with P&C's standard terms and conditions, unless prior written approval is obtained from the SPO.

In addition, agencies, community colleges and universities shall advertise their solicitations on P&C's Interactive Purchasing System (IPS) via the Internet for the following purchases:

1. Agencies and community colleges: For purchases involving an expenditure of public funds exceeding \$10,000, up to their maximum delegation limit.
2. Universities: For purchases involving an expenditure of public funds exceeding \$25,000, up to their maximum delegation limit.

Agencies, community colleges and universities may advertise solicitations of smaller dollar purchases through IPS.

The awarding of contracts under an agency's delegation shall be the responsibility of the using agency.

Procedures / Records

Where the total requirements for commodities, services or printing jobs involve an expenditure of public funds in excess of the agency's general delegation, the competitive bidding procedure as defined in G.S. 143-52 shall be utilized as follows:

1. Sealed offers for commodities and printing shall be solicited by P&C via advertisement;
2. For service contracts, the SPO delegates to agencies the authority to solicit sealed offers for their agency in accordance with the procedures outlined above. After opening and completing the evaluation of offers received, the agency shall prepare a written recommendation for award, and if over the agency's general delegation, shall submit a copy of all offers received and their recommendation of award or other action to P&C for approval or other action deemed necessary by the SPO (Examples: cancellation, negotiation, etc.). Notice of P&C's decision shall be sent to the agency. The awarding of contracts for services shall be the responsibility of the using agency.

Sealed offers for statewide term contracts for commodities, printing and services shall be solicited by P&C via advertisement.

For service contracts handled by an agency, the agency shall prepare a task description of the services and desired results. Task descriptions shall contain all of the following:

1. The date(s) of service (The contract shall not be for more than three years including extensions and renewals, without the prior approval of P&C.);
2. Detailed specifications or scope of work required;
3. What the State shall furnish;
4. What the contractor shall furnish;
5. The method, schedule, and procedures for billing and payments; and
6. Other subject matters bearing on the conduct of the work.

Rules applying to service and printing contracts do not apply to community colleges.

File Maintenance / Documentation

All purchasing records shall be maintained for a period of five years after the expiration date of the contract. Each file shall be identified individually so it can be readily located and referenced either through the NC E-procurement @ Your Service system or hard copy files.

All purchase transactions shall be documented, with each file containing, as applicable, the following:

- Original offers if in writing, or written documentation of verbal offers received;
- Reasons for award or cancellation;
- Worksheets/evaluations;
- Vendor list, if used;
- Written justification for waiver or emergency purchase;
- Tabulation of offers received;
- Copy of purchase order(s);
- Related correspondence;
- Reason(s) for receiving only one offer in response to a solicitation;
- Negotiated contracts; and
- Reasons for not accepting technical proposals.

After award of contract, all material in the file, except confidential information, shall be public record.

VI. DIVISION OF PURCHASE AND CONTRACT (P&C)

GENERAL

The purpose of this Section is to provide an overview of what normally happens to a requisition when it is sent to P&C for processing. This section also identifies organization within P&C and provides other general information of importance.

PROCESS

Requisitions

To expedite handling of an agency's requirement, requisitions may be sent to P&C electronically through IPS (online requisitioning). Agencies using E-Procurement should send requisitions via E-Procurement. Hardcopies may also be sent. In either case, the contents of a requisition sent by an agency to P&C should contain at least the following:

1. Agency name, address, and shipping address.
2. Requisition number, if one is used.
3. Authorized signature, unless submitted electronically.
4. Source of funds (Federal, State, Grant, etc., and what percentage of each).
5. Detailed description of the commodity or service desired.
6. Quantity needed.
7. Specifications.
8. Any special requirements that apply.
9. Names and addresses of known sources.
10. Agency contact name and phone number.
11. Estimated cost, if known, or amount of available funds for the purchase.

Verbal request for P&C to contract for an agency requirement is not an acceptable substitute for a written request, except for emergency or pressing need procurements, in case which written confirmation must follow.

P&C Control Numbers

Requisitions sent to P&C are assigned a unique, sequential control number. This number allows staff to locate requisitions when a call is received from an agency or from vendors. This number stays with the procurement file throughout its existence.

Purchasers

The Purchasing Section consists of purchasing groups that are assigned specific commodities and/or services. The purchasers are available to assist agencies with the interpretation of General Statutes, rules and regulations and to process requirements that exceed an agency's delegation. The current organization of the Division of Purchase and Contract and the assignment of commodities can be found on P&C's website at www.state.nc.us/pandc/.

Upon receipt by a purchaser, requisitions are processed as expeditiously as possible. Based on the content of the requisition, appropriate action is determined (i.e., preparation of a bid document, justification for waiver of competition or delegated to the agency for processing). In most cases, a solicitation document is developed and advertised on the Internet via IPS. Based on requirements, a site visit or a pre-bid conference may be necessary.

Registered vendors are notified of the solicitation via the Vendor Link NC system. Vendors who register will receive next day e-mail notification of procurement opportunities for products and services that they have selected.

After the offers are opened, a tabulation of the offers is made online. The offers and a copy of the tabulation are sent to the agency for review.

Once the agency completes its review, the original offers must be returned to P&C with the agency's recommendation. If P&C does not agree with the recommendation, the agency is contacted and the matter is resolved. When legal interpretation is needed, a representative of the Attorney General's Office may be contacted by P&C for legal advice. Once a recommendation is finalized, the purchaser presents to the Board of Award the recommendation for award or other action as deemed necessary.

Education / Outreach (Compliance / Training)

P&C shall conduct compliance reviews on purchasing practices at all agencies. The purpose of the compliance reviews shall be for determining if agencies are complying with North Carolina's purchasing statutes and rules. These findings may also determine whether an agency should continue having the same level of delegation, have it reduced, or qualify for an increase. A copy of the compliance report shall be provided to the agency's executive officer, the State Auditor, and the State Budget Officer, any of which are applicable.

The compliance officer(s) may schedule a meeting to review an agency's purchasing records for the purpose of a compliance review. The agency shall cooperate with the compliance officer(s) providing them with requested records and adequate office space. Agency purchasing staff shall be available to discuss the purchase transactions.

The SPO may lower, or raise if requested, an agency's (excluding the universities) general delegation, if the results of a compliance review merit such action. The SPO may lower the delegation to any level, including the complete removal of the delegation, depending on the nature of any violations found.

The SPO shall report to the University's Board of Governors the results of any compliance review conducted at the universities and shall provide recommendations based on those results.

The compliance officer's responsibility is not only to review purchase files, but to provide or recommend training and assistance in improving agency purchasing practices.

The Education/Outreach team within P&C provides on-going training. The objective is to foster legal and ethical purchasing principles, promote responsible procurement in the public's best interest, ensure compliance with all applicable purchasing laws, establish accountability, and support career development of the purchasing profession.

Operations

This section has broad responsibility internally and externally for centrally maintained computer systems and processes that support centralized and decentralized purchasing processes. These processes are included in the Interactive Purchasing System (IPS) and known as bid posting, vendor link (registration), purchasing and requisition tracking, and the vendor complaint service. This section also maintains the Internet Home Page and information contained therein at <http://www.state.nc.us/pandc/>.

Vendor Complaint Service

A centralized agency complaint service has been set up within P&C to handle problems that arise between agencies and vendors. When a problem arises with a vendor, whether it is late delivery or incorrect commodities shipped, etc., the agency's first step should be to contact the vendor directly in an effort to resolve the problem. Written communication or confirmation of verbal contact is highly recommended. If the problem is not resolved satisfactorily within a reasonable time period, or it becomes a recurring problem, then this problem should be reported to P&C on a Vendor Complaint Form, found on P&C's home page, under P&C Links, Division Forms, Vendor Complaint.

Once this information is received by P&C's agency complaint service, it will be logged into the system and directed to the appropriate purchasing group. A purchaser will then work with the vendor and the agency to resolve the complaint. P&C will be in contact with the purchaser at the agency for additional information or to report progress in resolving the complaint. Information regarding vendor performance is

very important to P&C as we evaluate and award future contracts. The information obtained from the vendor complaint system is used to determine whether or not a vendor is performing responsibly. This information may be used to recommend to the Board of Award that a vendor(s) not be permitted to do business with the State. P&C cannot disallow a vendor from doing business with the State based on a word-of-mouth complaint. Information on the performance of a specific vendor may also be requested by agencies in making procurement decisions. P&C must have this information in writing and on file. Therefore, it is important that this tool be used, but used correctly. If questions, please contact P&C concerning complaints against vendors.

BOARD OF AWARD

When the dollar value of a contract for the purchase of equipment, materials and supplies exceeds the agency delegation, the Board of Award (Board) shall review P&C's recommended action. P&C will submit the Board's recommendation (award, cancellation, approval, negotiation, etc.) to the Secretary of Administration. The Secretary may either concur with the recommendation of the Board by awarding contracts or approving recommended action or take other action as deemed necessary.

The SPO serves as secretary for the Board. Records shall be kept of each meeting and made public by the Secretary, unless the Secretary determines a specific record of the meeting needs to be confidential due to the nature of the contract.

VII. MISCELLANEOUS RULES

SEEKING COMPETITION

Recall of Offers

Offers may be recalled prior to opening upon signed request from an authorized agent of the offeror.

E-Mail, Facsimile, and Telephone Offers

E-mail, facsimile, and telephone offers shall not be accepted in response to solicitations that are required to be sealed. Sealed offers are required for procurements that exceed an agency's delegation and for statewide term contracts handled by P&C.

Public Openings

Advertised procurements shall be publicly opened at the time, date, and place identified in the solicitation document. At the time of opening, the names of the companies, the manufacturer(s) and catalog number(s) of the item(s) offered and the prices, deliveries and payment terms submitted shall be tabulated, and this tabulation shall become public record, except as provided below.

Under a two step process the cost proposal(s) shall not become public record until the technical offer(s) has been evaluated (first step) and then only those determined by the agency which issued the solicitation document, to have an acceptable technical offer shall have their cost proposal opened (second step). Cost proposals from those offerors whose technical proposals have been deemed acceptable shall be publicly opened, and the offeror(s) with the acceptable technical offer(s) notified of the time and place for the opening. At least two (2) agency working days notice shall be given prior to the opening. In addition, there shall be at least two agency employees present at the opening.

The cost proposals from offerors whose technical offers were deemed unacceptable shall remain unopened.

Late Offers, Modifications, or Withdrawals

It is the sole responsibility of the offeror to have their offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available.

No late offer or late modification shall be considered unless received prior to the bid opening, unless the offeror modification would have been timely except for the action or inaction of agency personnel directly involved in the procurement process. Withdrawals will not be considered unless received prior to contract award. Purchasers shall review the reasons for any withdrawal request to ensure that allowing withdrawal would not compromise the procurement process.

Mandatory Conferences / Site Visits

Mandatory site visits are a requirement that potential offerors must visit the premises where requirements will be used or installed to become familiar with site conditions. Site visits can be mandatory or non-mandatory. Mandatory site visits may restrict competition in that, unless an offeror attends the site visit, that offeror's bid will not be accepted.

Preproposal or pre-bid conferences are held with potential offerors prior to solicitation of offers to clarify any ambiguities, answer offeror's questions and ensure that all offerors have a basic understanding of the solicitation requirements.

1. It is recommended for agencies to urge and caution potential offerors to attend scheduled conferences or site visits.
2. When a solicitation requires potential offerors to attend a conference or site visit (mandatory or non-mandatory), the date, time, location, and other pertinent details of the conference or site visit shall be given in the solicitation document and in the advertisement (if required by rule).
3. If only one potential offeror attends the mandatory conference or mandatory site visit, the conference or site visit may continue to be conducted, but the solicitation shall be canceled immediately following the conference or site visit. If this occurs, the agency shall investigate why only one potential offeror was in attendance and ascertain if there is any competition available. If it is determined that competition is available, the agency shall again attempt to obtain competition, unless otherwise permitted by rule. If it is determined that there is no competition available, then the procurement may be handled as a waiver as permitted by rule.
4. Any and all questions by an offeror regarding a solicitation document shall be addressed to the purchaser named on the document. Any and all revisions to the solicitation document shall be made only by written addendum from the purchaser. Verbal communications are not binding.

EVALUATIONS

Error / Clarifications

When an offer appears to contain an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then be considered and acted upon. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the procurement document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices. The purpose of seeking clarification is to clarify existing information, not to allow additional information to be added.

Extension of Acceptance Time

When in the public interest, vendors may be requested to extend the time offered for the acceptance of offers.

Evaluations

In determining the award of contracts, bona fide offers shall be considered and evaluated as provided by statute and applicable rules. The evaluation criteria to be used in determining the award of contract shall be identified in the solicitation document. An unexecuted (unsigned) offer or an offer without a delivery time shall be rejected.

During the period of evaluation and prior to award, only the information provided in the tabulation is public record. Possession of offers, including any accompanying information submitted with the offers, shall be limited to persons in the agency who are responsible for processing and evaluating the offers and accompanying information. Offeror participation in the evaluation process shall not be permitted. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by the agency which issued the solicitation document. 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 trade secrets subject to the Rules on Confidentiality.

Basis for Rejection

In soliciting offers, any and all offers received may be rejected in whole or in part. Basis for rejections shall include, but not be limited to the following:

1. The offer being deemed unsatisfactory as to quantity, quality, delivery, price or service offered;
2. The offer not complying with conditions of the solicitation document or with the intent of the proposed contract;
3. Lack of competitiveness by reason of collusion or knowledge that reasonably available competition was not received;
4. Error in specifications or indication that revision would be to the State's advantage;
5. Cancellation or changes in the intended project or other determination that the proposed requirement is no longer needed;
6. Limitation or lack of available funds;
7. Circumstances which prevent determination of the lowest responsible or most advantageous offer;
8. Any determination that rejection would be to the best interest of the State.

If an agency does not receive a satisfactory offer in response to a solicitation and all offers are rejected, negotiations may be conducted with all known sources of supply that may be capable of satisfying the requirement, if it is determined by the agency that issued the solicitation document that soliciting offers again would serve no purpose. The negotiations shall be conducted by that agency if under their benchmark or delegation. Negotiations shall be conducted in writing and shall include standard language and terms and conditions issued by the Division of Purchase and Contract, unless otherwise provided by rule. If the negotiations are conducted with only one source or if only one source responds to the negotiations, the reason for lack of competition shall be documented in writing for public record. Negotiations may also be conducted under conditions that merit a waiver of competition, or in other situations that are advantageous as determined by the SPO.

Lack of Competition

The purpose of soliciting offers is both to seek and obtain competition; the responsibility is dual. Where only a single offer or a single acceptable offer is received or where reasonable and available competition is not obtained, **the reason shall be ascertained and made a matter of record.**

Inspection and Testing

In general, it is the responsibility of the agency to inspect all materials, supplies, and equipment upon delivery to ensure compliance with the contract requirements and specifications. However, when the contract requires an inspection by P&C, it shall be conducted by a designee of P&C.

P&C may re-inspect any item or service performed and reverse an agency decision when justified. P&C may periodically inspect any items to ensure that specifications are met. The agency must ensure that items and services purchased comply with applicable codes, statutes, local ordinances, policies or safety requirements. Where products delivered fail to meet the specifications or contract requirements, the discrepancy shall be handled by the agency which awarded the contract.

When samples are required in response to a solicitation document issued by P&C, then P&C will review those samples and test as appropriate. Samples shall not be sent directly to laboratories outside P&C or the agency unless authorized in writing by P&C.

After an inspection and when it is determined to be advantageous, the agency which awarded the contract may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration. If an increase in cost results in the total contract value being more than an agency's delegation, then prior approval from P&C is required.

For items requiring inspection by a P&C Quality Acceptance Representative, visit <http://www.doa.state.nc.us/PandC/gcinsp1.htm>. This list identifies only those items that routinely need an acceptance inspection by the Quality Acceptance Representative PRIOR to release of final payment. Inspection by a Quality Acceptance Representative shall be mandatory when the item costs **\$10,000.00** or more, except as noted.

Where applicable, purchasers shall include a statement calling for an inspection by a Quality Acceptance Representative in the Invitation for Bids (or Request for Quotations), and furnish a copy of the IFB (or RFQ) to the Program Coordinator within the Education Outreach Section. Also, furnish the Section with a copy of the Contract Certification at the time of distribution.

Partial and Multiple Awards

Partial, progressive, or multiple awards may be made by reason of insufficient funds, legislative mandates, where it is advantageous to award separately by items or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service(s) or geographical areas.

Notwithstanding the necessity for awards to more than one supplier in the case of some term contracts, such awards shall be limited to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Extreme care shall be exercised to protect the character and principals of competition.

Quantities shall not be divided among vendors on definite quantity requirements unless and except as provided in the solicitation document.

Reciprocal Preference

Reciprocal preference is a preference applied against a bidder whose home jurisdiction has preferences.

North Carolina General Statute 143-59(b) requires all departments, institutions, and agencies of the State to consider other states' preferences when evaluating bids. For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over \$25,000.00, a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that State.

For more information and the list of other states' preferences refer to: <http://www.doa.state.nc.us/PandC/rplaw.htm>.

Purchases for Persons with Disabilities

Agencies shall include special provisions for the purchase of good and services when such provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the American with Disabilities Act, as amended. These special provisions shall provide for the following:

1. The involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;
2. The flexibility necessary to meet those varying needs of individuals that are related to their disabilities;
3. The purchase outside of certified sources of supply and the waiving of competition when a single source can provide multiple pieces of equipment, including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;
4. Give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job requirements, or avoid residential placement in an institutional setting; and
5. Consider the convenience of the provider's location for the individual with the disability.

The following criteria shall also be considered:

1. Cost-effectiveness;
2. Quality;
3. The provider's general reputation and performance capabilities;
4. Substantial conformity with specifications and other conditions set forth for these purchases;
5. The suitability of the goods or services for the intended use;
6. The personal or other related services needed;
7. Transportation charges;
8. Any other factors pertinent to the purchase.

SPECIAL PROVISIONS

Purchase of Used Items

If it appears that the acquisition of used equipment, materials or supplies is in the public interest, competitive procedures shall be followed wherever feasible. When a used item is available on short notice or is needed for the disabled, refer to Section V, "Purchasing Methods", in this manual, whereby a waiver of competition or emergency action may be justified.

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 that which is considered most advantageous for the intended purpose. Confirmation should be made that the price of the used equipment is reasonable with respect its age, condition, and the price of new equipment, and should be included in the permanent file.

Auctions

All commodities covered by term contracts must be purchased from those contracts.

If buying at auction an item that is not covered by a term contract, and the dollar amount is under the agency's delegation, then the executive officer of the agency may authorize such action.

If the dollar expenditure will be over your agency's delegation, then prior approval must be obtained from the SPO, unless it is for an emergency or pressing need, which the purchase would then be governed by the Rule applying to Emergencies and Pressing Needs.

Articles For Special Purposes

Where articles are to be used for educational or training purposes, by disabled persons, or for test and evaluation or research purposes, special or overriding consideration may be given to the factor of suitability in the preparation of specifications, the evaluation of offers, for waiver of competition, and the award of contracts.

VARIOUS PURCHASES

Purchases for Across-The-Counter Resale

Purchases of items for "across the counter" resale are not handled through P&C. However, all purchases of items for use by agencies, even if channeled through bookstores or other internal supply sources, including stockrooms and warehouses, are to be in accordance with the Rules adopted in this Manual.

Of special interest to agencies selling merchandise is G.S. 66-58 "Sale of Merchandise by Governmental Units".

Purchasing From or Through A State Employee

Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior written approval from the SPO is required in instances which may potentially involve doing business with such personnel. In deciding whether to grant approval, the SPO shall consider the type item or service needed, the prevailing market conditions, whether competition is available, the cost involved, and the effects of doing business with the employee.

Use of Purchasing Power for Private Gain

The purchasing power of the State or the agency shall not be used for private advantage or gain. Purchases under contracts made by the State or the agency, except those in accordance with G.S. 143-58.1 shall not be allowed for personal use out of private funds nor shall agencies place orders for articles for ownership by employee or other individuals.

In accordance with G.S. 143-58.1, this prohibition shall not apply if:

- The agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the agency involved, or the public benefit or convenience; and
- Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures.

Cooperative Purchasing

Where an agency is a participant in an authorized cooperative project with another governmental activity or with a charitable non-profit organization, goods and services necessary to the project shall be acquired according to these Rules; provided, however, that if the interest of the state would be better served by one of the following acquisition methods, the SPO may authorize that acquisition method to be used:

- By making acquisition on behalf of such government activity or charitable non-profit organization; or,
- By authorizing acquisition on the State's behalf under the provisions of Article 8 of Chapter 143 of the General Statutes; or,

- 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 Secretary to the differences in purchasing rules, regulations and procedures of the contracting entity.

Rentals / Leases

Contracts for the rental or lease of commodities shall be handled under the same Rules applying to the outright purchase of commodities. As defined, a "rental" or "lease" shall not include an option or obligation to purchase the item in the rental or lease agreement.

Community colleges do not have to follow these Rules for rentals or leases, but there cannot be an option or obligation to purchase the item under the rental or lease agreement.

Lease Purchase / Installment Purchase Contracts

Lease Purchase Contract: Term used when outright ownership is uncertain or when it is the intent to delay ownership. Contract must provide for an option or obligation to purchase. Third party financing is not used. Ownership transfers only if and when the option to purchase is exercised, or when the time for the obligation to purchase is reached. The contract may include an option to upgrade the item during the lease period, which may be exercised without rebidding the contract. The same Rules applying to outright purchases shall be applied for lease-purchase contracts.

Installment Purchase Contract: Term used only when ownership of commodity at time of possession is intended. Third party financing is used in most cases. Creates in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys 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, then 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 under their delegation or by P&C if over 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 contract is contingent upon obtaining satisfactory financing. All agencies, except community colleges, shall handle the financing part of the procurement in the same manner as a contractual service contract is handled under the Rules in this manual. The financing contract should also include an option for early payment without penalty. (Community colleges are not required to follow the Rules in this manual when obtaining the financing contract, since it is considered a service contract.)

Modular Buildings

P&C, the Office of State Construction, the Department of Community Colleges, the Department of Public Instruction, and the Department of Insurance have worked jointly to establish procedures for the acquisition of modular buildings. Contact the office listed below for procedures applicable to your agency:

- For the purchase of new or used modular buildings:

State Agencies and Universities: Department of Administration, Office of State Construction, 301 North Wilmington St., Suite 450, Raleigh, NC 27601-2827

Community Colleges: Department of Community Colleges, Facility and Property Services Section, 200 West Jones St., Raleigh, NC 27603-1337

- For the lease of new and used modular buildings:

State Agencies and Universities: P&C

Community Colleges: Same as given above.

Printing

Printing is handled the same way as a commodity purchase would be handled, although community colleges do not have to follow P&C rules for printing purchases.

G.S. 148-70 requires the use of the Department of Correction if they can satisfy the requirement. Competitive bidding shall not apply for printing services available through the Department of Correction, however; prices of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the Secretary by reference to competitive bidding as required by law. Documentation of exceptions should be provided when the Department of Correction does not satisfy the requirement.

In accordance with the Section X of this Manual, it is the intent of P&C to promote the procurement of and the use of printed materials on recycled stocks that are printed as simply and economically as possible.

Whenever a public document that is published by an agency of this State is printed on recycled paper, the document shall contain a printed statement or symbol indicating that the document was printed on recycled paper.

A standard that shall be used for reports published by any State agency, the General Assembly, the General Court of Justice, and the universities, is as follows:

"Printed front and back on 20 pound white recycled paper using black ink, and if a cover is required, with a 65 pound recycled card stock cover, and if binding is required, with one or two staples."

Any community college, as defined in G.S. 115D-2(2), is encouraged to prepare any written reports in compliance with the above standard.

~~Every publication published at State expense which makes use of the multicolor process is prohibited except:~~

- ~~▪ In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;~~
- ~~▪ When the publication is a project of the Department of Environment and Natural Resources, or is a part of the magazine "Wildlife in North Carolina", published under the auspices of the Wildlife Resources Commission; or~~
- ~~▪ When the express approval of the SPO is obtained.~~

~~THE ABOVE ALSO APPLIES TO DOCUMENTS PRODUCED BY USE OF COLOR PHOTOCOPIERS.~~

NOTE: Session Law 2007-234 (House Bill 1640), approved July 18, 2007, repealed G.S. 143-169(b), which prohibited use of multicolor process. ~~The shaded sections above therefore no longer apply.~~

Every agency of this State publishing a public document, other than one published for the principal purpose of sale to the public, shall cause the following statement to be printed adjacent to the identification of the agency responsible for the publication:

"(Number of copies) copies of this public document were printed at a cost of \$_____, or \$_____ per copy."

The term "cost" shall include printing costs in the form of labor and materials, and other identifiable design, typesetting, and binding costs.

Any public document without a statement of cost shall not be mailed or distributed at public expense.

CONTRACTORS

Notification Of Award

After contracts are awarded, successful companies must be notified in writing or electronically. If the solicitation was advertised on the Interactive Purchasing System (IPS), then an award notice must also be posted on the IPS.

Guarantees And Warranties

Agencies shall enforce the contractual guarantee or warranty applying to the supplies, materials, and equipment purchased.

If any agency has difficulty in obtaining satisfactory performance, including service as provided for in a guarantee or warranty, under a contract handled by P&C, the matter shall be documented and referred to P&C for attention and appropriate action.

Agencies must notify vendors promptly when latent or other defects are discovered. In the event the vendor fails to remedy the condition reported, and the contract was handled by P&C, the matter shall be documented and referred to P&C.

Antitrust Violations

In instances of identical offers or where there are otherwise indications of collusion, awards may be made in a manner intended to discourage or prevent its continuance as deemed to represent the state's best interests. Instances of suspected antitrust violation shall be reported to appropriate law enforcement authorities by the agency which awarded the contract.

In submitting bids to P&C, each offeror must certify under penalty of perjury that their bid has been arrived at competitively and without collusion and that they have not violated any federal or North Carolina antitrust laws.

Advertising

No contract shall be used for commercial advertising by the contractor.

Protest Procedures

To ensure fairness to all offerors and to promote open competition, agencies and the Division of Purchase and Contract shall actively follow-up and be consistent in responding to an offeror's protest over contract awards.

This rule applies to contracts with an actual or estimated dollar value over ten thousand dollars (\$10,000). It is recommended that agencies establish procedures to handle an offeror's concerns for contracts with less dollar value.

When an offeror wants to protest a contract awarded by the Secretary of Administration valued at over ten thousand dollars (\$10,000), or a contract awarded by an agency (excluding the universities) valued at twenty-five thousand dollars or more, the SPO and the offeror shall comply with the following:

- The offeror shall submit to the SPO a written request for a protest meeting which shall be received by the Division within 30 consecutive calendar days from the date of the contract award. The offeror's letter shall contain specific reasons and any supporting documentation for why they have a concern with the award. If the letter does not contain this information, or if the SPO determines that a meeting would serve no purpose, then the SPO may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request.
- If the protest meeting is granted, the SPO shall attempt to schedule the meeting within 30 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 consecutive calendar days from the date of the protest meeting, the SPO shall respond to the offeror in writing with the decision.

When an offeror wants to protest a contract awarded by an agency, community college, or university valued at over ten thousand dollars (\$10,000), the agency, community college, or the university, and the offeror shall comply with the following:

- The offeror shall submit a written request for a protest meeting to the agency's, community college's or university's executive officer which shall be received by the executive officer within 30 consecutive calendar days from the date of the contract award. The executive officer shall furnish a copy of this letter to the SPO within 5 consecutive calendar days of receipt. The offeror's letter shall contain specific reasons and any supporting documentation for why they have a concern with the award. If the letter does not contain this information, or if the executive officer determines that a meeting would serve no purpose, then the executive officer may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request. A copy of the executive officer's letter shall be forwarded to the SPO.
- If the protest meeting is granted, the executive officer shall attempt to schedule the meeting within 30 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 consecutive calendar days from the date of the protest meeting, the executive officer shall respond to the offeror in writing with the decision. A copy of the executive officer's letter shall be forwarded to the SPO.
- The agency, community college, or university shall notify the SPO, in writing, of any further administrative or judicial review of the contract award.
- The executive officer may appoint a designee to act on the officer's behalf under this rule.

(Note: Community Colleges are exempt from these protest procedures for service procurements)

Default Proceedings and Debarment

The agency which issued the solicitation document resulting in the contract may find a contractor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor is found in default of contract, the agency which issued the solicitation document resulting in the contract may take action, immediate if necessary, to purchase the needed products, printing or services on the open market and charge any additional cost for the commodities, printing or service and expense for doing so to the defaulting contractor. If an agency finds a contractor in default, such action and the circumstances shall be reported by the agency to P&C in writing. This does not limit any other remedies that may be available to the State or agency. P&C may debar the contractor from doing business with the agency, or any agency, for a period of time at the discretion of P&C.

Faithful Performance

A bond, or other suitable means of ensuring faithful performance, may be required of the contractor at the contractor's expense. Liquidated damages, in the form of a monetary penalty for late delivery, may be provided for in the contract as a means of ensuring faithful performance from the contractor. However, the level of liquidated damages stipulated should be commensurate with the actual damages the agency would endure if the contractor failed to perform.

OTHER

Confidentiality

All information and documentation relative to the development of a contractual document (Request for Quotes, Request for Proposals, Waiver of Competition, Negotiation, etc.) 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 contract.

This includes all information and documentation relative to the development of a specification until the adoption of that specification or an award of contract if developed for a specific procurement or contract, whichever is later.

During the period of evaluating offers and prior to award, only the information provided in the tabulation is public record. Possession of offers, including any accompanying information submitted with the offers, shall be limited to persons in the agency who are responsible for handling the offers and accompanying information, and to others determined necessary by the agency which issued the solicitation document, for the purpose of evaluation and award of contract. Offeror participation in the evaluation process shall not be permitted. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by the agency which issued the solicitation document. 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 trade secrets, subject to the following Rule:

To promote maximum competition and to protect the public competitive procedure from being used to obtain information which would normally not be available otherwise, agencies may maintain the confidentiality of certain types of information. Such information includes trade secrets, as determined by North Carolina law, and like information as the SPO or the agency's executive officer or the officer's designee may determine to ensure the integrity of the public purchasing process. Trade secrets which the offeror does not wish disclosed shall be identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Cost information shall not be deemed confidential.

Construction Contracts vs. P&C

Every agency shall review the items being included in a construction/renovation project and remove any items that they consider are non-related to the actual construction/renovation of the building. Items that are considered commodities, or just furnishings, to complete the project for use by the agency, shall be handled in accordance with the normal purchasing rules. Items that are usually removed from construction/renovation projects include carpet, office panel systems, food service equipment, and furniture. If an agency determines that one of these items, or any item that is normally handled as a commodity purchase, is best suited for inclusion in the construction/renovation project, their justification shall be documented in writing for public record.

Payment Plans

Purchase contracts may provide for payment over a period of time. Such instances, however, shall be fully justified, kept to a minimum and carry written prior approval of the agency's executive officer. Executive officers shall see that statutory or other prohibitions are not violated. The intended plan of payment shall be included in the procurement document.

Inventories and Stores

P&C has responsibility for general supervision of storerooms and stores operated by state government, for supervision of inventories of tangible personal property belonging to state government and for reports by them of stocks on hand.

State agencies with centralized warehouse facilities, shall have inventory control procedures in place which ensure at a minimum, written inventory count of contents, written records of receipts and issues, economical ordering and efficient level of inventories, safe storage of hazardous materials, and security.

Funds from Different Sources

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

Conditional Grants, etc., in Public Purchasing

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

Post Award

For all contracts handled by P&C, the following applies:

- After award of a contract, any pertinent information concerning the performance of that contract shall be put in writing. All correspondence shall be copied to all parties (agency, P&C, contractor) for placement in the contract file.
- Any proposed changes to or interpretations of contract requirements must receive prior clearance from P&C.
- If pilot model inspections or pre-installation conferences are held, a written record must be kept and copies sent to the contractor, agency and P&C's file.
- Agencies have primary responsibility in expediting contracts. However, when assistance is required or it becomes clear that completion or intermediate requirements of any contract may be late, P&C shall be so advised in writing.

When a contract provides for liquidated damages or other late completion penalties, final authority to impose or waive such penalties rests with the SPO. When penalties appear to be indicated, properly documented recommendations for such shall be prepared by the agency and presented to the SPO.

VIII. SPECIFICATIONS

PURPOSE

The primary purpose of a purchase specification is to provide a basis for obtaining a product or service that will satisfy a particular need at an economical cost. North Carolina's purchasing program shall be built on the principle of competition. Purchasers shall seek competitive offers, except as may be permitted by statute or rule, from qualified and responsible sources of supply. Where competition is available, every purchaser shall use/write specifications and requirements that are reasonable to satisfy the need, but not unduly restrictive, which shall encourage competition in the open market and result in the best possible contract for the commodity, printing or service needed.

TYPES

There are two general types of specifications. A standard specification is originated and developed by P&C. It is comprehensive in nature and intended for repeated use. The other type of specification is

originated by the user and modified as necessary to accomplish the intent of the purchasing rules. Other type specifications may be used including, but not limited to, "brand name or equal" or "brand specific". However, solicitations using "brand name or equal" may be difficult to evaluate.

P&C is authorized by Rule to inquire into the need for, and the level of quality of, the items and services requested.

STANDARD SPECIFICATIONS

A standard specification is intended for general use, applicable insofar as practicable to the needs of agencies and kept current by P&C. In formulating such a specification, advisory committees made up of personnel from various agencies and the private sector may be employed for advice and assistance. This type of specification may be offered also for the review and comment of manufacturers and suppliers who may participate in future solicitations on the items in question.

Upon completion of all necessary studies, reviews, and drafts, any proposed standard specification is submitted to the SPO for consideration. When a specification is adopted as a standard, it becomes applicable to agency purchases generally and shall be used if it applies to the commodity needed. A standard specification may be modified by P&C on an interim basis as deemed necessary or advantageous until such time as the SPO can consider the proposed revision.

QUALIFIED PRODUCTS LIST

A qualified products list (QPL) is a type of specification which may be adopted as a standard by P&C. The essential characteristic of this procedure is the examination and prequalification of brands and models of products on the basis of product information and/or samples and tests. The prequalification limits offers to products included on the list (QPL). Manufacturers may submit products for evaluation and inclusion on the list. P&C may impose a deadline for submission of samples. If a product is added to the list, it is then eligible to be offered in response to a solicitation document.

ARTICLES FOR SPECIAL PURPOSES

Where articles are to be used for educational or training purposes, by handicapped persons, or for test and evaluation or research purposes, special or overriding consideration may be given to the factor of suitability in the preparation of specifications, the solicitation document, the evaluation of offers, for waiver of competition, and the award of contracts.

NORTH CAROLINA PRODUCTS

Where quality and availability allow, specifications are to be based on products grown or manufactured in North Carolina. This special interest in North Carolina products is intended to encourage and promote their use, but is not exercised to the exclusion of other products or to prevent fair and open competition.

INSPECTIONS

The Quality Acceptance Representatives' primary function is to perform quality acceptance inspections. They are assigned to designated areas of the State and conduct acceptance inspections as required on a scheduled basis. Their duties include recommending release of payment to contractors following acceptance of the project or item, and re-inspection if necessary whenever a project is not in complete compliance at the time of the acceptance inspection. Field service visits to agencies are conducted by the Quality Acceptance Representatives to obtain feedback on the performance of items in service and to lend other assistance as might be required.

IX. ADVERTISING REQUIREMENTS

All advertisements required by Section V, "Purchasing Methods", shall be through P&C's Interactive Purchasing System on its home page on the internet. If advertisement is required, the solicitation shall be advertised at least once and at least 10 days prior to the date designated for opening. This rule does not prevent solicitation of offers by additional direct mailings or additional advertisement by an agency.

Agencies required to advertise their solicitations shall electronically transmit the required data directly to P&C's home page. The required data shall include the complete solicitation document (specifications, requirements, terms and conditions, etc) with agency name, buyer name, phone number and address for accessing hard copies of the solicitation, solicitation identification number, title (a short description of the commodity, service or printing requirement), and the opening date, time and place. If the solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, this information shall also be furnished with the advertisement, to include date and time, location, and contact person and phone number.

Within 3 agency working days from award of contract that has been advertised through P&C, agencies shall be required to electronically transmit an award notice directly to P&C's home page on the Internet. The award notice shall be posted for at least 30 consecutive calendar days. This award notice shall identify the contract and award information.

Exceptions to this rule are as follows:

- When it is deemed by the agency's executive officer or his designee that there is a valid reason for the agency not to transmit the advertisement or award notice electronically, that agency may submit the data to P&C, so that P&C may transmit it electronically; or, the agency may place the advertisement (excluding the complete solicitation document) via newspaper. If advertised via newspaper, the agency which issued the solicitation document shall be responsible for the advertisement and the award notice shall not be required. Some valid reasons include computer equipment failure or networking difficulties, or insufficient copies of samples for a printing job.
- If there is an attachment to a solicitation that the agency determines will not be electronically transmitted, then the solicitation document, when electronically transmitted, shall include instructions to contact the agency which issued the solicitation to obtain the attachment.
- If an agency determines that it is not feasible to electronically transmit a particular solicitation document through P&C's home page, then the agency shall electronically transmit a summary notice, the same way as if they had electronically transmitted the solicitation document, which will instruct someone inquiring on P&C's home page about the solicitation, to contact the agency for a hard copy.

X. ENVIRONMENTALLY PREFERABLE PROCUREMENT

BUYING RECYCLED PRODUCTS

It is the policy of this state to encourage and promote the purchase of products with recycled content. All agencies shall, to the extent economically practical, purchase and use, or require the purchase and use of, products with recycled content.

All agencies authorized to purchase materials and supplies or to contract for services shall review and revise their competitive procedures and specifications for the purchase or use of materials and supplies to eliminate any procedures and specifications that explicitly discriminate against materials and supplies

with recycled content, except where procedures and specifications are necessary to protect the health, safety, and welfare of the citizens of this State.

All agencies shall review and revise their bid procedures and specifications on a continuing basis to encourage the purchase or use of materials and supplies with recycled content and to the extent economically practical, the use of materials and supplies with recycled content.

Materials and supplies with recycled content that are available for purchase under a statewide term contract are identified in the contract catalog.

All agencies shall report annually to the Division of Pollution Prevention and Environmental Assistance, the amounts and types of materials and supplies with recycled content that were purchased during the previous fiscal year and its progress toward reaching the goals for buying recycled paper and paper products.

In furtherance of the State policy, it is the goal of the State that all agencies purchase paper and paper products with recycled content according to the following schedule:

- At least 35% by June 30, 1996; and
- At least 50% by June 30, 1997, and the end of each subsequent fiscal year, of the total amount spent for the purchase of paper and paper products during that fiscal year.

PURCHASING for WASTE REDUCTION

P&C shall review and revise its competitive procedures and specifications to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products.

All agencies are required to purchase such supplies and products to the extent that the purchase or use is practical and cost-effective. All agencies are required to purchase or use remanufactured toner cartridges for laser printers to the extent practical.

ENVIRONMENTALLY PREFERABLE GOODS AND SERVICES

Additional requirements from the Governor's Executive Order not included in statute:

Agencies shall purchase and use environmentally preferable goods and services, including products made wholly or in part from recycled materials, whenever feasible and practical. Environmentally preferable products are those that have a lesser or reduced effect on human health and the environment in their manufacture, use, and disposal when compared with other products that serve the same purpose. All agencies shall give consideration to environmentally preferable products that are more energy efficient, less toxic, less polluting, and which generate less waste overall.

P&C shall make every effort to identify environmentally preferable goods and services, and recycled-content products that meet appropriate standards for use by agencies and shall actively promote the purchase of these products and services by agencies and others eligible to purchase from State term contracts.

Agencies shall develop specifications to encourage vendors to offer environmentally preferable and recycled-content products. Specifications shall not contain restrictive language or other barriers to purchasing environmentally preferable or recycled-content products, except where specifications are necessary to protect public health, safety, and welfare.

All electronic office equipment purchased, including, but not limited to, computers, monitors, printers, scanners, photocopy machines, and facsimile machines shall be Energy Star compliant.

Agencies shall give priority consideration to the purchase of re-manufactured and used equipment, including, but not limited to, such equipment as photocopiers and other equipment.

Agencies shall give priority consideration to the purchase of fleet vehicles that use less polluting fuels and have the highest available miles-per-gallon rating. On and after January 1, 2004 at least 75% of the new or replacement cars and light duty trucks (8,500 pounds or less Gross Vehicle Weight Rating) purchased by the State must be AFVs or low emission vehicles (*Reference [North Carolina General Statutes 143-215.107C](#)*).

Agencies shall make every attempt to purchase items only when needed and in amounts that are not excessive. Agencies shall, to the extent feasible and practical, procure items that are more durable, have minimal packaging, or are readily recyclable when discarded. Agencies shall discourage the use of disposable products where reusable products are available and economically viable for use.

Agencies shall purchase and use recycled paper for all letterhead stationary, reports, memoranda, and other documents when feasible and practical. All new and re-manufactured photocopy machines and laser printers purchased shall be able to use copy paper having at least 50% total recycled content and a minimum 30% post-consumer content.

Agencies shall attempt to meet the goal by Fiscal Year 2000-01, 100% of the total dollar value of expenditures for paper and paper products be for purchased of recycled-content paper and paper products. Agencies shall attempt, to the extent feasible and practical, to purchase recycled paper and paper products with the highest percentage of post-consumer content.

Agencies shall avoid unnecessary printing or photocopying of printed materials and shall require double-sided copying on all documents when feasible and practical. To the extent feasible, all new and re-manufactured photocopy machines and laser printers purchased shall have duplexing capabilities.

XI. CONSULTANT SERVICES

GENERAL

Applicability of this Section

The rules in this section do not apply to community colleges.

The rules in this section do not apply to the following:

- Contracts for attorneys employed by the North Carolina Department of Justice or by other agencies of state government pursuant to the provisions of G.S.147-17.
- Contracts for physicians or doctors providing direct medical care for the clientele of any state agency.
- Contracts entered into by the General Assembly or its special study commissions.
- Contracts entered into by the Institute of Government to provide or obtain consulting or advisory services.
- Contracts to provide services without compensation to the provider of the services or to his employing agency.

- Contracts entered into by a state agency pursuant to specific statutory authority which provides, in the opinion of the Governor or designee, a specific alternative procedure for the selection and award of such contracts.
- Consulting for design or redesign of information technology supporting business processes, which are handled in accordance with the rules adopted by Information Technology Services of the Governor's office.

Except as specifically noted above, consultant contracting procedures apply to all consulting services, whether provided by an individual, state agency, or private organization/firm.

Definition

Consultant services shall mean work or task(s) performed by governmental entities or independent contractors possessing specialized knowledge, experience, expertise and professional qualifications to investigate assigned problems or projects and to provide counsel, review, analysis or advice in formulating or implementing improvements in programs or services. This includes but is not limited to the organization, planning, directing, control, evaluation and operation of a program, agency or department.

Policy

State agencies shall acquire consultant services only when such a contract is determined to be in the best interests of the State. In acquiring such services, competition shall be sought whenever practical as determined by P&C. No agency which is subject to the provisions of these rules may contract for services of a consultant nature except in accordance with the provisions of these rules.

Consultant Contracts with Other State Agencies

Whenever possible consultant services shall be obtained from other State agencies when the services available from other agencies substantially meet the reasonable specifications of the requesting agency.

Relationship of Consultant to State

No contract for consultant services shall create an employer-employee relationship between the State of North Carolina and the consultant.

Consultant Contracts Contrary to this Section

Any contract executed without the approval of the Division of Purchase and Contract and the Governor or designee as provided in this section shall be void, and no state funds shall be expended pursuant to any such contract. Any employee or official of the State of North Carolina who executes a contract without the approval of the Governor or designee shall be liable to repay any amount expended pursuant to such contract plus court costs.

AUTHORITY

Requests for Authority to Contract with Consultants

Before receiving authorization to seek consultant services, an agency shall submit to P&C written justification for its request for consultant services. This written justification shall at a minimum explain:

- What services the agency desires to secure;
- Why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency;
- How the work to be performed relates to the proper functions of the agency;
- What benefits the agency expects to receive from the consultant's services;

- What the agency estimates to be the cost of the services sought; and
- What potential sources of consultant services, if any, the agency has identified.

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 were not available from those sources. The written justification shall be accompanied by a letter of endorsement for the proposed contract(s) from the agency head or designee.

Review of Agency Requests

The documents submitted by agencies requesting authority to retain consultants will be reviewed by P&C. 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:

- Canvass additional sources within state government; or
- Solicit proposals from private contractors; or
- Execute a negotiated contract(s) without competitive proposals if P&C and the Governor have determined that performance or price competition is not available, or that the requirement is for an authorized cooperative project with another governmental unit(s), or a public or private nonprofit organization(s), or that the contract price is too small to justify soliciting competitive proposals; or
- Abandon the project for being outside the scope of the agency's responsibilities or for having insufficient benefit to the State relative to the potential expenditure of funds.

CONTRACTING

Competitive Proposals

- An agency which receives approval to solicit proposals for consultant services shall:
 - Prepare a request for proposals in accordance with these rules and disseminate among prospective service providers
 - Circulate the request for proposals to such sources of consultant services as may be identified by P&C as well as all sources identified by the requesting agency
 - Publicly open all proposals received at a date and time set in the request for proposals; however, in a two-step evaluation process, only the technical proposal shall be opened on the opening date. The cost proposal is opened only if the technical proposal is determined by the State to be acceptable
 - Upon receipt of proposals submit a copy of each proposal received to P&C
 - Review all proposals received on the basis of evaluation criteria significantly related to the function to be performed and equally applied to all proposals received
 - Submit a memorandum to P&C citing criteria for selection and recommending contract award
- P&C shall evaluate all proposals received in accordance with the requirements of the request for proposals and shall consider the recommendations of the requesting agency. Upon completion of P&C's analysis, P&C shall forward a recommendation to the Governor or designee. The requesting agency shall be notified in writing by the Governor or designee that the agency head is authorized to execute a contract(s) with an approved service provider(s), or that all proposals have been rejected.

Negotiated Consultant Contracts

An agency which receives authorization to enter into a negotiated contract(s) for consultant services without soliciting competitive proposals shall submit the proposed contract(s) to P&C for review and approval prior to execution. Upon completion of this review, the requesting agency shall be notified in writing by the Governor or designee that an approved contract(s) may be executed by the agency head.

Consultant Contract Modification

Any modification to an approved contract(s) shall be subject to the same approval requirements as the original contract(s).

XII. HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)

As a result of Executive Order 150, the HUB Office was established in the Office of the Secretary of the North Carolina Department of Administration to initiate more outreach to women, minority and disabled owned businesses. This office will encourage increased participation by businesses as well as State Agencies, Community Colleges, Universities and Public Schools in the State's procurement process.

The HUB Office serves as a resource to provide HUBs with assistance in doing business with the State as well as to agencies. The office seeks to identify capable HUBs in areas of construction, commodities and services that could do business with the State and provide accurate information to businesses. This office also directs these businesses to the agencies that could best use their products or services and serves as information resources to aid agencies and businesses in becoming more active participants in the State's public contracting process.

Doing business with firms owned by minorities, women, persons with disabilities, disabled business enterprise and nonprofit work centers for the disabled will raise the number of suppliers, thereby increasing competition, which should result in higher quality goods, lower prices and better services. The net result will benefit businesses as well as the taxpayers of North Carolina.

The HUB Office is responsible for certifying HUBs via on-line vendor registration. For more information about the office, please visit www.doa.state.nc.us/doa/hub/

XIII. STATE SURPLUS PROPERTY

ORGANIZATION

The Department of Administration is responsible for administering the sale and disposal of surplus equipment, materials, and supplies for agencies. For more information please visit www.surpluspropertydivision.com/.

TRANSFER or SALE

The State Surplus Property Office shall determine the means for disposal or transfer of all State owned property.

TRADE-IN

For some types of items it may be more advantageous to the State to trade-in used property against the purchase of a replacement. Before an agency makes any final decision to trade in an item, the State Surplus Property Office shall be contacted for guidance.

Where an agency solicits competition for the purchase of a new item and it appears that a trade-in may be advantageous, the solicitation shall contain a provision requesting that a trade-in allowance be offered and prior approval by the State Surplus Property Office is required.

XIV. APPENDIX

P&C ORGANIZATION

(Please refer to P&C's Home Page at: <http://www.doa.state.nc.us/PandC/assign.htm>)

N.C. GENERAL CONTRACT TERMS and CONDITIONS

(Please refer to P&C's Home Page at: <http://www.doa.state.nc.us/PandC/divforms.htm>)