Statewide IT Procurement Office

North Carolina Information Technology Procurement Policies and Procedures

Office of Information Technology Services
Statewide IT Procurement Office
http://www.its.state.nc.us/itprocurement/

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1. INTRODUCTION

1.1 Purpose

The purpose of this manual is to acquaint State of North Carolina purchasing personnel with the policy and procedures that govern public IT purchasing and to serve as a reference guide. For the purpose of this manual, purchasing personnel are considered to be anyone charged with responsibility of purchasing Information Technology (IT) goods and services for their respective agencies.

The function of the Statewide IT Procurement Office (Statewide) is to purchase, or contract to purchase, information technology goods and services for State Agencies (See N.C.G.S. 147-33.82). ITS must establish processes, specifications, and standards for all IT purchases, licenses, and leases. ITS also has the responsibility to ensure that all IT procurements align with the State government’s technical architecture. The University of North Carolina and its constituent institutions, and the North Carolina General Assembly are exempt from this provision (See N.C.G.S. 147-33.80). Other State Agencies and local government entities may use ITS programs, services, or contracts in accordance with the policies and rules adopted by the State Chief Information Officer (SCIO).

1.2 Statewide IT Procurement History

On July 21, 1999, the General Assembly ratified Senate Bill 222 and it was approved on August 10, 1999 as Session Law 1999-434 and became effective January 1, 2000. The first part of the bill provides for the use of electronic payment for state and local government for payments of government fees, costs, and debts. The second portion of the bill created the Office of Information Technology Services (ITS) in the Department of Commerce. The bill defined information technology enterprise management as a method for managing distributed information technology assets from acquisition through retirement so that total ownership costs (purchase, operation, maintenance, disposal, etc.) are minimized while maximum benefits are realized. On September 1, 2000 the Office of Information Technology Services was moved from the Department of Commerce and now reports directly to the Office of the Governor. (See Session Law 2000-174)

1.3 Acronyms and Abbreviations

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<td>Best and Final Offer</td>
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<td>CPO</td>
<td>Chief Procurement Officer</td>
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<td>HUB</td>
<td>Historically Underutilized Business</td>
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<td>IFB</td>
<td>Invitation for Bid</td>
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<tr>
<td>IPS</td>
<td>Interactive Purchasing System</td>
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<td>OITS</td>
<td>Office of Information Technology Services</td>
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<td>RFI</td>
<td>Request for Information</td>
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<td>RFP</td>
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<td>RFQ</td>
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1.4 Definitions

Definitions are set forth in 9 NCAC 06A .0102, and certain frequently used defined terms are presented here for ease of reference.

**Agency:** Defined as an entity enumerated in N.C.G.S. 147-33.81(6).

**Best Value Procurement:** Defined as a procurement process with the fundamental objective reducing the total cost of ownership. The particular procurement methods used are selected so as to result in the best value for the State in terms of the function to be performed or delivered. Competitive best value procurement allows for the use of alternate competitive purchasing techniques in addition to low price analysis in the selection of supply sources.

**Clarification:** Defined as communications between the State and an offeror that may occur after receipt of an offer for the purpose of eliminating irregularities, or apparent clerical mistakes in an offer. A clarification may also be used to allow the State’s reasonable interpretation of an offer or offers or to facilitate the State’s evaluation of all offers. Clarification shall not be used to cure material deficiencies or to negotiate. [9 NCAC 06A .0102 (3)]

**Commodities:** Defined as any equipment, material or supplies. Also referred to as Goods and Items.

**Competition:** Competition in purchasing exists when the available market for the goods or services to be acquired consists of more than one supplier who is technically qualified and willing to submit an offer. [9 NCAC 06A .0102 (5)]

**Competitive Range:** Defined as a range of all of the most highly ranked offers as established in the solicitation and as determined by the purchasing Agency during evaluation of offers. [9 NCAC 06A .0102 (6)]

**Deficiency:** Defined as either a failure to meet a stated requirement or a combination of weaknesses in an offer that increases the risk of unsuccessful contract performance.

**Delegations:** The authority granted by the SCIO to an Agency to handle purchases made under a certain dollar amount.

**Emergency Situation:** A situation which endangers lives, property or the continuation of a vital program as determined by the purchasing Agency head. [9 NCAC 06A .0102 (7)]

**HUB:** As a result of Executive Order #150 and N.C.G.S. 143-48, the Minority, Women and Disabled Business Enterprise Program was established to encourage increased participation in the state’s procurement process. Effective April 20, 1999, the program name was changed to the Historically Underutilized Business (HUB) Program to better reflect the intent of this statewide program. The following types of businesses are classified as HUBs: minority-owned business (MBE); woman owned business (WBE); disabled owned business; disabled business enterprise, non-profit workshop for the blind or severely disabled (MBE). ([www.doa.state.nc.us/hub](http://www.doa.state.nc.us/hub))

**Information Technology (IT):** Electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, and any services related to information technology support. (N.C.G.S. 147-33.81)

**Negotiation:** Defined as oral or written communications in either a waived, limited, or open competitive procurement between the State and offerors undertaken with the intent of allowing offerors to revise their offers. Revisions may apply to price, schedule, technical
requirements, or other terms of the proposed contract. Negotiations are specific to each offer and shall be conducted to maximize the State’s ability to obtain best value based on the evaluation factors set forth in the solicitation. The State may reward technical solutions exceeding mandatory minimums with higher evaluations or negotiate with offerors for increased performance beyond mandatory minimums.

**Open Market Procurement:** A procurement for a good or service that is not covered by a state term contract or Agency specific contract.

**Pressing Need:** A need arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown of machinery, or unanticipated volume of work, and which can be rectified only by an immediate on-the-spot purchase (or rental of equipment, supplies, materials or services). This is not the same as an Emergency Need (See #12).

**Short Term Staffing Contract:** A task related contract used to provide short term augmentation on an hourly basis. Normally engagements are for six months or less.

**Statewide Term Contract (STC):** Contracts for goods or services established and administered by the Statewide IT Procurement Office on behalf of all Agencies. The contract document will identify the condition(s) under which usage by Agencies is required.

**Vendor:** Company, firm, corporation, partnership, individual, etc. submitting a response to a solicitation document or in response to a negotiation; (also referred to as bidder or offeror).

**Waiver of Competition (Sole Source):** Under conditions listed in 09 NCAC 06B .0901 where it is deemed in the public interest to procure with a specific vendor for a specific brand.

### 2. DELEGATION

#### 2.1 Delegation Authority

Under 09 NCAC 06B .1304 the general IT purchasing delegation/benchmark shall be $25,000 unless authorization special delegation is granted by the SCIO pursuant to 09 NCAC 06B .1303. This delegation is for all Agencies. The general delegation establishes the maximum authorized dollar limits for IT purchases of goods or services for an Agency without Statewide IT Procurement Office approval. The award of contracts under the general delegation shall be the responsibility of the Agency. The Agency is also responsible for establishing written procurement policies and procedures under their delegated authority.

Procurement of IT goods and services above the Agency delegation must be reviewed by Statewide IT Procurement prior to solicitation and again prior to awarding the contract.

- An Agency shall not divide requirements to keep them under the general IT delegation or benchmark. (09 NCAC 06B .0313)
- Contract terms (lengths) cannot exceed three (3) years including optional extensions and renewals, unless an exemption is obtained from the SCIO or his designee and it has been determined that it is advantageous to the State. (09 NCAC 06B .0301)
- North Carolina’s procurement program is based upon the principle of open competition. When competition is not sought, or obtained, the reason must be valid and must be documented. (See 09 NCAC 06B .0901, 06B .1402)
- Solicitations for procurements with an estimated value to exceed the purchasing Agency’s delegation must be advertised on the IPS web page. Agencies may also use other means of advertisement in addition to IPS. Solicitations within the
purchasing Agency’s delegation may be advertised on the IPS web page. (See 09 NCAC 06B .0301, 06B .0314)

2.1.1 Increased Delegation

State Agencies, on an individual basis, may request a special delegation to increase the monetary limitation for purchasing. (09 NCAC 06B .1303) For an Agency to receive an increased delegated authority, it must comply with the following:

- Demonstrate a need for the increased dollar limit authority requested.
- Have approval from the Agency head.
- Submit a plan of purchasing responsibility, which identifies the individual(s) designated as the Agency's chief purchasing official and shows adequate staffing possessing capability to handle the delegated authority. The individual chiefly responsible for purchasing must demonstrate sufficient purchasing ability to accommodate the Agency’s particular needs and be knowledgeable of public procurement’s issues and trends.
- Submit an Agency purchasing policies and procedures manual showing compliance with State Statutes and Statewide IT Procurement policies.
- Require that all personnel involved in the purchasing process participate in training sessions, workshops, or conferences with the Statewide IT Procurement Office, as needed. The Agency shall work to promote professionalism by its purchasing staff through continued training.
- Submit purchasing reports as identified by Statewide IT Procurement.

After reviewing the above requirements, SCIO will assess the needs and capabilities of the requesting Agency and grant or deny any increase in delegated purchasing authority. Once approved, Agencies are encouraged to re-delegate purchase authority to division, bureau, section, and program levels consistent with their capability to monitor such activity.

2.2 Removal or Reduction of Delegated Authority

Delegated authority is subject to review by the Statewide IT Procurement Office and may be reduced or rescinded for failure to comply with any of the above requirements or failure to correct noted deficiencies within a reasonable time period. Delegated authority removal or reduction may also occur should an Agency’s chief purchasing officer position be downgraded or become vacant.

2.3 Competitive Bidding Exemptions

Per 09 NCAC 06B .1301 it is not mandatory for items listed below to be purchased through or approved by the Statewide IT Procurement Office, however, ITS Rules, standards and proper procurement procedures must be followed.

- Personal Services contracts (services provided by individuals through direct employment contracts with the State). However, per SL 2013-360, IT Personal Service contracts must be reviewed and approved by the SCIO and OSBM;
- Non-severable services that are merely incidental to the purchase of supplies, materials, or equipment such as installation services;
- Personal services provided by a professional individual (person) on a temporary or occasional basis. However, per SL 2013-360, IT Personal Service contracts must be reviewed and approved by the SCIO and OSBM;
- Services provided directly by an Agency of the state, federal or local government, or their employees when performing the service as part of their normal governmental function; and
- Information technology subscriptions for printed materials or online technology
information news services. Such services do not include software, or software services, licensed by subscription or delivered online.

In addition, all commodities and contractual services covered by term or convenience contracts must be purchased in accordance with the instructions of those contracts. Unless noted in the contract these purchases do not require review by the Statewide IT Procurement Office.

3. THE PROCUREMENT PROCESS

3.1 Seeing the Whole Picture

The procurement process is much more than simply buying something. It includes all activities from planning, preparation and processing of a requisition, solicitation, evaluation, award and contract formation, to receipt and acceptance of delivery, payment, inventory tracking and goods and services disposition. Regardless of whether the product or service required is processed by the Agency under delegated authority or sent to the Statewide IT Procurement Office, the workflow is essentially the same. The following items should be considered when making any purchase:

- Identifying the need and product or service that will best fulfill that need. Keeping in mind cost containment, identify the product or service that best fulfills the job requirements. This may require that Agency purchasing personnel meet with end user(s) to identify needs and solutions.
- Developing specifications that describe the characteristics of a product or service being sought. Consideration should be given to suitability and to overall cost effectiveness in addition to acceptability and initial price. Specifications should be written to encourage, not discourage, competition consistent with seeking overall economy for the purpose intended. The goal is to invite maximum reasonable competition.
- Bidding or seeking price quotations from a number of possible suppliers as per the policy established by the Statewide IT Procurement Office.
- Reviewing the bids or offers to determine overall economy for the intended use of the product or scope of the services.
- Purchasing or contracting for goods or services in accordance with polices of the Statewide IT Procurement Office.
- Receiving the goods or service and verifying that it meets the requirements of the purchase order or contract.
- Processing the invoice through appropriate channels in a timely manner.
- Keeping good records that detail all of the above considerations. Public purchasing requires that most records be made available for public inspection upon request, so good detailed record keeping is essential.

3.2 Types of Purchases (9 NCAC 06B .0701)

Procurement of IT goods and services is divided into the following major types of purchasing:

- **Term Contracts**: A contract established and administered by the Statewide IT Procurement Office that consolidates certain goods and services requirements of all State Agencies. Agencies must use term contracts when products or services that meet their needs are available from the contract.
- **Statewide Convenience Contracts**: A contract established and administered by the Statewide IT Procurement Office that consolidates certain goods and services requirements of all State agencies. Statewide Convenience Contracts are not mandatory-use contracts and may be used at the Agency’s discretion.
4. AGENCY IT PROCUREMENT PROCESS

4.1 Agency Prepares IT Procurement Request

Prepare a procurement request/requisition/solicitation to include the following information:

- Issuing Agency name, address, and contact’s name, phone, and email
- Using Agency name, address, and shipping address if different
- The completed solicitation document (procurement templates and other forms are located on the Statewide IT Procurement Office website at http://www.its.state.nc.us/ITProcurement/Forms.asp
- Detailed description or specifications of the goods or services required
- Estimated Cost
- Quantity
- Delivery requirements
- Any special requirements
- Response/Offer submission instructions
- Evaluation and Award criteria
- IT Procurement Terms and Conditions
- Other terms and conditions as applicable (must not conflict with IT Procurement Terms and Conditions)

Solicitations for services must include:

- Date(s) of service
- Detailed specifications or type and level of work required in the form of a Statement of Work (SOW)
- What the State will furnish
- What the vendor will furnish
- Method, schedule, and procedures for billing and payments

For request utilizing the Short Term Staffing Statewide Convenience Contract, see the instructions located on the Statewide IT Procurement Office page at: http://www.its.state.nc.us/ITProcurement/Convenience.asp

Limiting or Waiving Competition – If the request asks for limitation or waiver of competition, a justification letter supporting the rationale for waiving or limited competition must accompany the request (See Section 14 for Waiver conditions). The justification must include information such as, but not limited to, background information about the request, the specification condition(s) for limited or waived competition being supported, why technically no other product or service can meet the Agency’s requirements and how that determination was made, the effect on the Agency if limitation or waiver is not approved, etc. Be aware that justification cannot be based on cost or time factors.
4.2 Process in Accordance with Term Contract
If the IT goods or services are fully covered by a Term Contract and do not exceed abnormal quantity limits, process the request in accordance with the requirements of the Term Contract. An Agency must use a mandatory term contract when products or services that meet the Agency’s needs are covered by the contract. An Agency may use Statewide Convenience Contracts at its discretion.

A list of IT term contracts is located on the Statewide IT Procurement Office page at http://www.its.state.nc.us/ITProcurement/TermContracts/TContracts.asp.

4.3 Small Purchase (09 NCAC 6B.0301(c))
A small purchase is $25,000 or less and is not covered by term or convenience contracts established by ITS. Each Agency must establish internal procedures for processing these requests.

4.4 Cooperative Purchasing (09 NCAC 06B.1006)
A cooperative agreement is an agreement between a vendor and one or more states or state agencies that allows the parties to collaboratively or collectively purchase information technology goods and services in order to increase economics of scale and reduce costs. N.C.G.S. 147-33.81 (SL 2013-333). Examples of cooperative agreements include GSA Schedule 70 and certain contracts available through the Western States Contracting Alliance (WSCA). Procedures for using such agreements are available on the IT Procurement website.

4.5 Competitive Procurement
This procedure is used when the total amount of the IT procurement is greater than the IT Agency delegation amount of $25,000. These procurements must be solicited competitively. Solicitation documents must be issued and contain standard terms and conditions issued by Statewide IT Procurement. Each Agency shall establish internal written procedures for processing requests less than $25,000. See Sections 10, 11 and 12 below for guidelines in processing competitive solicitations.

4.6 Purchasing Through Statewide IT Procurement
This procedure is used when the total amount of the IT procurement is greater than the Agency delegation ($25,000). (09 NCAC 06B.1304) The procedures for processing a request in this category are included within this manual. See Section 5, Statewide IT Procurement Office Process for detailed instructions. This procedure also applies to the establishment, or modification, of existing contracts, Term contracts and Convenience contracts.

4.7 Requests Designated as Projects
All State Agency information technology projects subject to N.C.G.S. 147-33.72C, whether the project is undertaken in a single phase or component or in multiple phases or components, are subject to review by the ITS Enterprise Project Management Office (EPMO).

All Project requests must be in the Planning & Design phase of the project workflow before a procurement request can be submitted to the Statewide IT Procurement Office. A link to a document entitled The Solicitation Document Review Work for IT Procurements During the Project Lifecycle is located on the Statewide IT Procurement page.
5. **STATEWIDE IT PROCUREMENT OFFICE PROCESS**

5.1 **Receive and Log Procurement Requests**

Requests should be sent to the Statewide IT Procurement Office via e-procurement, e-mail (submit2.StatewideIT@its.nc.gov), fax or mail. Upon receipt, Statewide will assign a control number to each procurement request and log it in the Statewide IT Procurement Office Tracking System. This number will be used to track the request through the procurement process.

Statewide will review the request to ensure that all the necessary information has been included. If the request is missing required information Statewide will contact the requesting Agency in order to obtain the additional information.

5.2 **Routing**

Statewide will route all State agency requests to the Assistant or Chief Procurement Officer in order to ensure that Project Approval was received when appropriate.

5.3 **Assignment**

After approval by the Assistant or Chief Procurement Officer, the request will be assigned to a Contract Specialist.

5.4 **Contract Specialist**

When a request is assigned, the Contract Specialist will notify the end user within a day of receipt, that they are handling the request. At that time any issues of concern may be addressed. The Contract Specialist will process the request in accordance with the type of procurement required.

6. **SOLICITATION GUIDELINES AND PROCEDURES**

This section provides guidelines and procedures for developing and processing a solicitation document for an IT competitive procurement. There are generally three (3) types of solicitation documents/methods:

- Request for Quotes (RFQ);
- One-step and two-step Invitation for Bids (IFB); and
- One-step and two-step Request for Proposal (RFP).

The dollar amount and complexity of the procurement will determine the best solicitation and evaluation method to use. A complex procurement may also start with a Request for Information (RFI). The response to an RFI may indicate what type of solicitation should be used and help provide evaluation criteria for the solicitation.

6.1 **Communications with Potential Vendors Prior to Solicitations**

The purpose of exchanging information with potential vendors is to improve the understanding of the agency's requirements and industry capabilities. Pre-solicitation communications with potential vendors enhances the ability of the vendor to judge whether or how they can satisfy the agency's requirements. Such information can also enhance the Agency's ability to obtain quality supplies and services at reasonable prices by increasing the efficiency in proposal evaluation, negotiation, and contract award.

Agencies are encouraged to promote early pre-solicitation exchanges of information about future acquisitions. An early exchange of information among industry and the state participants in the acquisition process can identify and resolve concerns regarding:

- Acquisition strategy, including proposed contract type, terms and conditions, and
acquisition planning schedules

- Feasibility of the requirement, including performance requirements, statements of work, and data requirements
- Suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information
- Availability of reference documents
- Any other industry concerns or questions

RFIs are one technique of communicating with potential offerors prior to solicitations. RFIs may be used when the state does not intend to award a contract but wants to obtain a general price estimate, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the State to form a binding contract. Responses to the RFI may result in a solicitation or it may indicate that the procurement is too risky, too expensive, not feasible, etc., at the current time and no further action will take place. Responses to an RFI may also provide criteria that may be used in developing a solicitation.

6.2 Specifications

Solicitations for IT goods and services must include standard specifications or requirements to align with the Statewide Technical Architecture as developed by the SCIO.

New or standard IT specifications should be reasonable to satisfy the need, but not unduly restrictive. The specifications should encourage competition in the open market and result in the best possible contract for the goods or services needed. Specifications may be specified as “Brand X or functional equivalent” in order to establish the level of specification desired.

Agency developed IT specifications may be submitted to ITS for consideration as a standard IT specification.

6.3 Evaluation/Ranking Methods and Criteria

The evaluation/ranking methods and criteria to be used in the evaluation process must be clearly stated in the solicitation document. Evaluation criteria must conform to “best value” as defined (N.C.G.S. 143-135.9) and applied in the solicitation document. A written evaluation methodology should be prepared prior to receiving offers from vendors; see 13.7.2 below.

6.4 Types of Solicitations

6.4.1 Request for Quotes (RFQ)

This is a written solicitation document which is generally used for seeking quotes from a single vendor or very limited group of vendors. This is normally used for purchases of specific goods and services or easily defined goods (i.e., for purchase of a small number of boxes of computer diskettes or for certain approved sole source procurements). RFQs normally require that a waiver of competition has been justified.

6.4.2 Invitation for Bids (IFB)

This is a formal, written solicitation document normally used for seeking competition and obtaining offers for larger quantities or many types of easily defined goods. The IFB normally contains a standard pricing form. The responses to the IFB are sealed bids that include unit prices for each line item on the pricing form. The technical and cost offers may be submitted and opened at the same time in a one-step process or separately in a two-step process. In the two-step process, the technical offers are submitted, opened, and evaluated. Then, only the price offers from
Vendors that submitted technically acceptable offers or Vendors in the competitive range will be opened or solicited. The price offer will be opened at the time and location specified in the solicitation. The price offers are then evaluated.

6.4.3 Request for Proposals (RFP)

This is a formal, written solicitation document usually used for seeking competition and obtaining offers for services or a combination of goods and services. The response to the one-step RFP is a sealed offer that includes the price proposal and the technical solution.

The two-step RFP is usually used for seeking competition and obtaining offers for complex services or a complex combination of goods and services.

If the RFP is for a solution, the document should allow for the vendor to propose their solution based on the Agency’s mandatory criteria. This approach will provide the Agency with solutions that can be meaningfully evaluated against each other by the evaluation committee. If the RFP is for services, it should include a Statement of Work (SOW) or a scope of work statement in addition to specifications. The two-step RFP requires the Vendor to submit two sealed packages; one contains the technical proposal and the other contains the cost proposal. The Agency may elect to have the cost proposal submitted at the same time as the technical proposal or following the technical evaluation. The RFP will provide detailed instructions regarding the timing of the submissions for the two proposals.

- No two RFPs are alike and preparing one can be a difficult task. However, a well-written RFP can alleviate many problems. Agencies are invited and encouraged to involve the Statewide IT Procurement Office early in the development of the RFP in order to provide assistance and valuable advice regarding the development of RFPs.
- RFPs take a significant amount of time to prepare and review before they are issued. On the average, an RFP will take at least 90 days from receipt of the RFP at Statewide to contract award. In your planning, allow adequate time for possible rewriting of specifications, questions from vendors, pre-proposal conferences, for vendors to prepare their proposals, committee evaluations, legal review and contract award.
- It is important to identify and state in the RFP all evaluation factors. These factors let the vendor know the factors that are important to the Agency and will be the only way for the Agency to properly evaluate the proposals and assure that the awarded proposal meets all the requirements of the state. Factors not specified in the RFP cannot be used for evaluating the proposals.
- Evaluation factors should be developed early or concurrently with the specifications in the formulation of the RFP. Make a detailed list of the most important aspects of the service or goods required, including cost, and develop the evaluation factors from it. Specifications that are vital to the solution and must be done should be designated as mandatory in the RFP.
- RFPs must be written to allow vendors the opportunity to use their expertise to offer the best solution or service based on the Agency’s needs. Overuse of mandatory specifications may not allow vendors the leeway to provide their best response.

6.5 Pre-Proposal Conference or Site Visit

Consider whether a pre-proposal conference or site visit for potential offerors is needed to further explain, clarify, or identify areas of concern in the RFP. These should always be held prior to submission of the vendor’s initial proposals. If using a pre-proposal
conference or site visit, follow these guidelines:

The pre-proposal conference or site visit should be scheduled at a time and date identified in the RFP. Indicate how many representatives from each company will be allowed to attend (usually a maximum of three). Keep in mind that some vendors may have to travel a distance to attend, so sufficient time should be allowed for vendors to receive the RFP, formulate questions, and make necessary travel plans.

Any questions regarding the RFP should be submitted in writing prior to the pre-proposal conference and be answered by the Agency at the meeting. Additional questions may be entertained; however, responses may be deferred and provided at a later time. Any oral answer given by the Agency is to be considered tentative by potential offerors. Official answers to all questions should be published in writing and supplied to all attendees (post to IPS) in the form of an addendum.

7. SPECIFICATIONS

Specifications are one of the most important elements of the purchasing process. The preparation of good specifications is probably the most difficult function in the process. Inadequate or poorly written specifications are the cause of many bidder challenges and can considerably delay the purchasing process. This information is designed to define specifications and assist agencies by providing guidelines to good specification writing.

7.1 Definition of Specification

The term “Specifications” refers to a description of the characteristics of a good or service. Specifications set forth the characteristics of the goods and services to be purchased so as to enable the vendor to determine and understand what is to be supplied. This information may be in the form of a description of the physical, functional, or performance characteristics, a reference brand name or both. Specifications may be incorporated by reference and/or through attachment to the solicitation. Specifications must be prepared to invite maximum competition.

Solicitations for IT goods and services must include standard specifications or requirements to align with the Statewide Technical Architecture and other standards established by the State CIO.

7.2 Effective Specification Writing

The degree to which specifications are open and unrestrictive directly affects the type and extent of the competition desired. Specifications provide for quality control, that is, they assure that the quality of an item is suited to its intended use and eliminates unnecessary features or frills.

Specifications are public records; they serve to keep the purchasing open by allowing the public to see exactly what is being purchased. Specifications are used during the evaluation of bids to determine whether or not bids are responsive.

Some of the difficulty in preparing specifications stems from the fact that the State can seldom dictate the exact characteristics of the products it wants. The requirements of an Agency are usually not sufficient to justify a special or name brand product. Consequently, specifications are developed around a manufacturer’s product specifications. If the specification did not have to satisfy State statutes requiring competitive bidding, the task would be much easier. The immense variety of items purchased by the State further complicates specification writing. Products are improved, new products are introduced, some products are discontinued and the needs of the Agencies change. Consequently, the function of preparing and updating specifications must be an ongoing one.
To provide a common basis for bidding, specifications should set out the essential characteristics of the item being purchased, so that all bidders know exactly what is wanted. If an essential requirement is left out of the specification, an award may be made for a product or solution that does not meet the needs of the purchaser. The lack of suitability of the product or solution may not become apparent until much later. Situations such as these are seldom resolved to anyone’s satisfaction and can be a waste of taxpayers’ money. If such an omission is discovered in time, the offer should be canceled, specifications corrected, and new bids solicited or an addendum may be posted to correct the omission.

Avoid over or under specifying. Items should be able to perform as necessary without unessential frills. Requiring unnecessary features can result in specifications so restrictive that they defeat competition and increase the cost of the item.

Remember that all purchasing activities are subject to public and vendor scrutiny.

### 7.3 How to Develop Specifications

The function of specifications is to provide a basis for obtaining a commodity or service that will satisfy a particular need at an economical cost. Use the checklist below when preparing specifications:

- Specifications should be clear and accurate, yet simple. They should NOT be so specific that competition is eliminated.
- Specifications should be understandable to both the bidder and the purchaser.
- Specifications should be as flexible as possible. Inflexible specifications defeat the competitive bidding process.
- Specifications should be legible and concise.
- Specifications should be capable of being checked. Specifications that are written in such a way that a product or service offered cannot be checked as meeting specifications is of little value and results in confusion.
- Specifications should be reasonable in tolerances. Unnecessary precision is expensive and may be unduly restrictive.
- Specifications should be as fair to the bidder as possible and allow for competitive bidding by several bidders.

### 7.4 Specification Sources

There are many available sources of assistance when developing specifications. Here are suggestions for gathering specification information:

- Collect as much information as possible from the end user as to the function and performance of the requested product. Use their expertise and knowledge.
- Collect product information from the industry (brochures, catalogs, specs, etc.). Many manufacturers list their catalogs and product specifications on the Internet.
- Look for standards and test information from professional societies where available.
- Look for specification information from other government entities. Check to see if standard specifications already exist. Use the Internet and libraries for research. Many states have standard specifications listed on the internet.
- Call on other “experts” in the purchasing community for help.
- NIGP: The National Institute of Governmental Purchasing maintains a library of over 10,000 specifications developed by federal, state, and local government purchasing entities in the U.S., and Federal, Provincial, and local entities in Canada.
- Research cooperative agreements. (See 9 NCAC 06B .1006)
7.5 Brand Name or Functionally Equivalent

In the absence of standard specifications, the State often uses manufacturers’ brand or model designations as a standard. Brand names are used to indicate general performance and quality levels. It should be clearly stated that other brands or models will be accepted on a “functionally equivalent” “or equal” basis.

To aid in communicating the desired quality level to bidders, an effort should be made to use brand name designations that are known throughout the industry or have specifications that are readily available. If a bidder does not know which of his products is comparable to the designated brand names, he cannot bid intelligently and may not bid at all. Bidders customarily know their competition and can usually tell without too much difficulty which of their brands or models will be considered equal. Still, the bidder cannot be sure which features of the item will be considered crucial in making the award. In addition to the brand name, the specifications should name the minimum requirements to be used in comparing brands and making the award.

7.6 Basic Contents of Specifications

The following information is presented as a basic outline for specifications. Sections may be added or deleted as required by the product specification being developed.

- Scope, Classification, or Description - The first words or lines of a specification should be a general description, classification, or scope of the product desired and the intended or desired use of the item or service.
- List of Requirements - These requirements should identify measurable physical, functional, and quality characteristics that meet the requirements. This may include a detailed list of characteristics, such as: physical dimensions, processor speeds, storage capability, operating systems, standard of workmanship, or basic design. The text should be clear, simple language, free of vague terms or those subject to variation in interpretation. The use of abbreviations should be restricted to those in common usage and not subject to possible misunderstanding.
- Using Shall, May, or Should?
  - Use “shall” or “must” to express a requirement binding on the vendor or the purchaser.
  - Use “may” or “should” to express non-mandatory provisions.

- Figures and Tables - Figures, illustrations, graphs, etc. can often describe the item more clearly and accurately than text.

8. Terms and Conditions

8.1 General Terms and Conditions

ITS includes general terms and conditions with solicitation templates (e.g. RFP, RFQ, IFB). These terms and conditions vary depending on the procurement: different terms are more appropriate for services, software, Software as a Service (SaaS) and goods. Agencies should consider business, technical and risk issues while preparing a solicitation and part of this preparation should include modifications to the general terms and conditions. Business and technical needs may necessitate changes. Agencies should consult with legal counsel, and an Agency’s legal counsel may consult with counsel at ITS.

8.2 Specific Issues, Terms and Conditions to Consider

There is a balance between protecting the State and conducting business with vendors that requires consideration of risks, liabilities, performance and remedies. Agencies should consider the following:
• Risks may include simple risk of contract breach (i.e. having to contract with another vendor to complete the work), failure to perform a legal requirement (under state or federal law), or a myriad of others. Agencies should review business and technical issues to identify all risks and then work with IT procurement to modify appropriate terms and conditions.
• N.G.G.S. 147-33.72C requires some form of performance assurance in all contracts for IT projects.
• The standard limitation of liability for contract damages is “2X”, or twice the value of the contract. Vendors typically seek adjustment to this value, and it is a frequent issue in negotiations.
• The general terms and conditions provide rights of termination and for default. Agencies are often concerned with enforceable rights to ensure performance without having to declare a vendor in breach of a contract. Agencies should consider these matters when drafting the solicitation. This is a frequent issue in negotiation, and especially in IT projects conducted in an iterative manner.

8.3 Debarment
ITS may debar vendors as authorized by 9 NCAC 06B.1206. Agencies' experience and documented reports to ITS regarding vendor performance, default or other such issues is important to the proper exercise of debarment authority. ITS provides a “vendor complaint form” on its website for Agency use.

9. Debriefing Vendors
A debriefing is a meeting with agency procurement staff at a vendor's request to discuss its offer, usually for the purpose of helping the vendor understand why it was not awarded a contract.

9.1 Debriefing is Optional
Agencies may prepare a solicitation document allowing vendors to request a debriefing by including a statement to the effect that debriefings may be requested. Debriefings may be conducted prior to award or after an award is made. (9 NCAC 06B.0405) Modifications to the solicitation must conform to the scope, notice and other provisions of the Rule.

9.2 Scope of Debriefing
Pre-award debriefings may not disclose information from competing offers; only public information may be disclosed. Debriefing is not a “point-by-point” comparison between bidders or their offers. Weaknesses, deficiencies and risks found in an offer may be disclosed during debriefing, together with cost and technical merit. (9 NCAC 06B.0405(c)(5)) Post-award debriefings may include rankings and evaluation information of other competing vendors.

10. PROCESSING A REQUEST FOR INFORMATION (RFI)
The RFI is an informal request for information. Information gathered may be used to determine if a formal solicitation is needed.

10.1 Developing an RFI
There is no specified format for an RFI. Since the RFI is not a formal solicitation for a procurement, Statewide IT Procurement terms and conditions shall not be included. The RFI should provide as much information as possible to define the type of information that is being sought. The RFI should state clearly that it is not a request for offer and that no award will result.
10.2 Issuing an RFI

The RFI may be sent directly to interested vendors or it may be electronically posted to the IPS web page at www.ips.state.nc.us. Statewide is not required to be involved in the RFI process, so they do not have to review any documents or attend any meetings or conferences associated with the RFI. If the RFI indicates that conferences or meetings will be included in the RFI process, the issuing Agency will coordinate and conduct any such conferences or meetings. The RFI must indicate whom the responses should be sent to and a deadline for submission of responses. The information gathered will be analyzed by the issuing and/or using Agency.

10.3 Review of RFI Responses

After the information has been analyzed, the issuing Agency will decide if further procurement action is desired. The information gathered should provide enough detail to determine the best type of solicitation process to initiate next.

11. PROCESSING A REQUEST FOR QUOTE (RFQ)

RFQs are normally used in non-advertised and sole source solicitations in order to ensure that the vendor agrees to the Statewide IT Terms and Conditions. A copy of the RFQ and other IT forms may be accessed at www.its.state.nc.us/ITProcurement/forms.asp

11.1 Issuing an RFQ

When an RFQ is advertised, it may be sent to the vendors using any method desired by the issuing Agency, including the IPS web page at www.ips.state.nc.us. Bids responses do not have to be sealed.

11.2 Receiving Quote Responses

Public openings for RFQs are not required. An offeror may recall their quotes prior to the opening by submitting a written request, signed by an authorized agent, to the Agency.

11.3 Quote Evaluation and Acceptance

The issuing Agency will evaluate the offers utilizing the “best value” evaluation and award criteria specified in the RFQ and identify the best offer.

Once the best offer has been selected, the Agency will notify the successful vendor of the award decision. If the ITS RFQ form is used, the authorized representative of the Agency will complete the Acceptance of Quote section of the accepted offer and send a copy of the acceptance to the successful vendor.

11.4 RFQ used for Waiver of Competition

The RFQ document may also be used for a waiver of competition, where there is only one source of supply. Waiver requests over the Agency delegation must be approved by Statewide IT Procurement in accordance with Waiver of Competition guidelines (See Section 16). Negotiations may be conducted when conditions merit waiver of competition.

12. PROCESSING A BID

The Invitation for Bid (IFB) is normally used for procurements of goods or simple, common services. The Request for Proposal (RFP) is generally used in more complex procurement for services, goods or for a combination of services and goods.

12.1 Issuing a Bid

Statewide must review any solicitation that exceeds the Agency’s delegation amount. (9
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NCAC 06B.0301, 06B.1303, 06B.1304) Statewide will review the solicitation and consult with the Agency on any issues. Statewide may return the solicitation to the Agency for further revisions or request additional documentation. For bids under an Agency’s delegation, the Agency will work with the end user if any further revisions or additional documentation is needed.

Bids must be advertised on the IPS web page at www.itp.its.state.nc.us. Bids must be posted for at least ten (10) days prior to the opening date.

12.2 Receiving Offers

The Agency must receive sealed offers no later than the date and time of the bid opening. Any offers received after such time will not be considered.

12.2.1 One-Step Bids

On the opening date for the bids, the bids will be publicly opened and only the vendor’s name will be made public record. Price offers are made public record after an award is made.

12.2.2 Two-Step Solicitations

On the opening date for the bids, the technical portion of the bids will be publicly opened and only the Vendor’s name will be made public record. The price portion of the offer will be opened after finalists have been determined at a later point. Price offers are made public record after an award is made.

The Two-Step solicitation may state two different submission dates, one for the technical proposal and a second submission date for the price proposals. If the price proposals are to be submitted after the technical evaluation, only the vendors with an accepted technical proposal and that are a part of the competitive range will be invited to submit a price proposal. The invitation to submit a price proposal will specify the price proposal opening date, time, and location. At least two (2) business days’ notice will be given for the price proposal opening.

12.3 Offer Evaluation and Acceptance

Bids shall be evaluated utilizing the “best value” evaluation and award criteria specified in a solicitation document in order to identify the best offer.

12.3.1 Under Agency Delegation

Once the best offer has been selected, the Agency will notify the successful vendor of the award decision. The authorized representative of the Agency will complete the Acceptance section of the accepted offer and send a copy of the acceptance to the successful vendor.

12.3.2 Over Agency Delegation

All award recommendations for goods or services procurements originally approved by the Statewide IT Procurement Office must be reviewed by Statewide prior to award.

12.3.3 Award Recommendation

Once the best or lowest technically acceptable offer (based on the award method stated in the solicitation) has been selected by the Agency, the Agency will send Statewide a recommendation for award. If Statewide approves the award recommendation, a Certification of Award will be sent to the Agency. The Agency will then issue their purchase order. If Statewide or SCIO does not agree with the vendor selection, Statewide will work with the issuing Agency to revise and resubmit
13. EVALUATION OF OFFERS

All evaluation factors and criteria and their relative importance must be stated clearly in the solicitation document. Relative strengths, deficiencies, weaknesses, and risks supporting the evaluation must be documented in the contract file. The evaluation team (should consist of a minimum of two members) shall determine the final ranking of all offers under consideration using only the criteria set forth in the solicitation document. All vendors are ranked from most advantageous to least advantageous to the state.

13.1 Lack of Competition

If only one offer is received in response to a solicitation, Statewide and the Agency will ascertain the reason and make it a matter of record. Further action will depend upon reasons causing the situation. If no responses were received, it may be possible to amend the solicitation to make the solicitation more attractive to vendors. If there is no way to amend the solicitation that would result in offers, the Agency may elect to cancel the solicitation. If only one acceptable offer is received, the Agency will have to determine if they want to cancel the bid, negotiate with the one offeror to ensure that the State receives the “best value,” negotiate with known sources of supply or change the solicitation specifications and re-advertise to encourage more offers.

13.2 Error/Clarification

Clarification is defined in 9 NCAC 06A.0102. Vendors may be given the opportunity to clarify certain aspects of proposals or to resolve minor clerical errors. Clarifications cannot be used to cure material deficiencies (e.g. proposal deficiencies or omissions, materially alter the technical elements of the proposal), or to negotiate. Vendors may recall offers prior to acceptance of an offer by the State. 9 NCAC 06B.0304

13.3 Negotiation

Negotiation is defined in 9 NCAC 06A.0102. If the purchasing Agency expects to use negotiations in the procurement, the solicitation document may be used to establish subject matter areas for negotiation. Negotiations are communications in a waived, limited or open competitive procurement between the State and vendors that are undertaken with the intent of allowing the vendors to revise their offer. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed contract. Negotiations are specific to each offer, and shall be conducted to maximize the State’s ability to obtain best value based on the evaluation factors set forth in the solicitation. The State may also give evaluation credit for technical solutions exceeding mandatory minimum requirements or to negotiate with vendors for increased performance beyond mandatory minimum requirements. If specified in the solicitation and following the negotiations, the vendors may submit final price adjustments or Best and Final Offers (BAFO) to be used in the final phase of the evaluation process. All negotiations must be finalized in a BAFO document.

Negotiations are advantageous to achieve “best value” by lowering costs through pricing as well as incorporating specific changes based on business and technical needs, Agency expertise, risk assessments and other factors. Negotiations are especially encouraged for IT projects.

13.4 Best and Final Offer

A time and date for submission of best and final offers must be set if negotiations are conducted. Best and final offers should be requested only once if possible, however, it may be necessary for subsequent rounds of best and final offers. If it is in the Agency’s interest, additional discussions will be conducted or the Agency's requirements will be changed.
Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award.

13.5 Extension of Offer Acceptance Time

When the State determines that it is in the public interest, the State may request that the bidders extend the time given in the proposal for acceptance of the offers. A written request to extend shall be sent to the vendor for signature agreeing to the extension.

13.6 Basis for Rejection

ITS or the Agency may reject any offer in whole or part. Any rejections will be made a matter of record. Basis for rejection includes, but is not limited to, the following reasons:

- Offer is deemed unsatisfactory in terms of quantity, quality, delivery date, price, or service offered.
- Offer does not comply with conditions of the solicitation document or with the intent of the proposed contract.
- Lack of competitiveness.
- Errors in specifications or indications that a revision of the solicitation would be advantageous to the state.
- Cancellation or changes in the circumstances surrounding the solicitation eliminate the need of the solicitation.
- Limited or lack of funding available.
- Circumstances prevent the determination of the lowest responsible or most advantageous offer.
- Any other basis that rejection would be in the best interest of the state.

13.7 Source Selection Methods (“Best Value”)

13.7.1 Tradeoff Method

The tradeoff method is used when other than the lowest price or highest technically qualified offer may be considered for selection. Following are some of the factors, which are to be considered when contemplating the use of the tradeoff method.

- Solicitation must include all evaluation criteria and relative importance
- The evaluation criteria must have consistent rating methodology
- Price must always be included as an evaluation criteria
- Mandatory requirements must be met by the bidder. Mandatory requirements are “Yes” or “No,” and
- Cannot be evaluated for points, ranking, etc.
- Other criteria factors may include, but are not limited to:
  - Quality factors
  - Delivery and implementation schedule
  - Maximum facilitation of data exchange and systems integration
  - Consistency of the proposed solution with the state’s strategic program direction
  - Effectiveness of business solution and approach
  - Industry and program experience
  - Prior vendor performance
  - Vendor’s financial stability
  - Proven development methodologies and tools
  - Innovative use of technologies
- Evaluation criteria must allow overall ranking to be adjusted when considered against other non-price factors.
13.7.2 Evaluation Methodology

The evaluation methodology must be determined prior to opening any proposals. Qualified bids will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by G.S. §143-135.9, 9 NCAC 6A and 9 NCAC 6B.0302. A tradeoff methodology will be used to evaluate bids based on the criteria set forth in the solicitation.

Identify the major criteria that are critical to the success of the RFP. Some commonly used criteria are: qualifications, relevant experience, quality of work, references, service, physical facilities, human resources, cost (direct and indirect), technical capabilities, and proposed timelines. RFPs can only be evaluated on stated criteria, so include everything to be measured and ensure that the criteria are measurable. Avoid subjective, arbitrary, or general terms.

Begin the evaluation by seeing if the bidder met all the mandatory criteria as stated in the bid. Mandatory criteria are “Yes” or “No”, they are not graded, measured or evaluated; they are pass/fail for the bid.

Generally, there are three Methods for RFP evaluations:

Method One:
Adjectival – If the offer meets all the mandatory criteria, then the evaluation committee begins looking at the criteria as defined in the bid. Each criterion is determined to be either a strength or a weakness for each bidder. Then, based on those strengths and weaknesses, the evaluation committee determines which offer is the best proposal by stating why vendor #A was better than vendor #B, which was better than vendor #C, etc. The award recommendation would be written in this manner.

Method Two:
Ordinal or Ranking – When using the ordinal or ranking method, the criteria are stated in relative order of importance in the bid.

If the offer meets all the mandatory specifications, then the evaluation committee begins looking at the criteria in order of importance, but without weighting them. So, in a list of criteria, in your order of importance, criteria #1 is more important than criteria #2, which is more important than #3, etc. The evaluation methodology must be determined prior to the opening date any offers. The best proposal will be determined by which offer best meets the criteria given in the bid document.

Method Three:
Scoring and Weighting – Each non-mandatory criteria is assigned a point value or weighted value relative to their importance.

If the offer meets all the mandatory criteria, then the evaluation committee begins scoring the criteria as defined in the solicitation. Note that mandatory criteria are not scored, the mandatory criteria are either met or not met. Then, based on the total value given, the evaluation committee will determine which offer is the best proposal based on that vendor #A received more points than vendor #B, which received more points than vendor #C, etc. The award recommendation should be written in this manner.

13.7.3 Communications with Vendors

Discussion with vendors following receipt of offers must be conducted in accordance with the provisions of the solicitation. The solicitation must specify the
types of discussions; clarifications, communications, or negotiations to establish competitive range that will be permitted.

If negotiations are conducted, the vendors may be permitted to submit revised offers to include changes that resulted from the negotiations in the form of a BAFO. Award must be made to the vendor whose proposal is determined to be most advantageous to the state, using the evaluation criteria set forth in the solicitation.

13.8 Lowest-Price Method

Used when the lowest price of a technically acceptable offer is expected to result in a best value selection. The following lists some areas to be considered when contemplating the use of the lowest-price method. The solicitation must state that the award will be based upon the lowest price among offers meeting or exceeding the non-price requirements of the solicitation.

- Tradeoffs are not permitted in this method
- Offers are evaluated for technical acceptability, not technical ranking
- Only clarifications are allowed of the vendors (no negotiating unless the purchase is over the Agency delegation and is approved by the Statewide IT Procurement Office prior to negotiation)
- Award must be made to the lowest price, technically acceptable offeror

13.9 No Acceptable Offers and Negotiation

If all offers that were submitted were rejected but the State determines that a new solicitation would not be in the State’s best interests, negotiations may be conducted with all sources that may be capable of meeting the requirements. The negotiations must be in writing and must include the appropriate IT terms and conditions. If negotiations are conducted with only one vendor, the State must determine why and the reason will be documented for public record. The solicitation should state that negotiations may be used if no acceptable offers are received.

13.10 Procurements That Are Designated As Projects

The Agency must obtain review and written approval from the ITS Enterprise Architecture Office of the selected proposal if the procurement has been designated as an IT project. Additionally, the Agency must obtain the written approval to award the project from the Office of State Budget and Management. The Agency will work directly with each of these offices for approvals before submitting its award recommendation to the Statewide IT Procurement Office. The Statewide IT Procurement Office cannot accept an award recommendation for a project designated procurement without these reviews and approvals.

14. CANCELING A PROCUREMENT

A procurement may be cancelled at any time during the procurement process if the requirement stated in solicitation no longer exists, funds are lacking, etc. When the dollar amount of the contract exceeds the delegation, the Agency must seek approval from Statewide to cancel the procurement. Justification and approval/disapproval documentation regarding the cancellation must be included in the Procurement File.

15. AMENDING A SOLICITATION

The issuing Agency may decide that it is in the state’s best interest to amend a solicitation. In such cases an addendum is prepared. The addendum must be advertised using the same media/method as the original solicitation. If the original was posted on the IPS web page, the
16. WAIVER OF COMPETITION (Sole Source)

Competition may be waived pursuant to 9 NCAC 06B.0901. When a waiver is contemplated, and the estimated total amount exceeds the Agency’s delegation, the procurement request, along with the justification, must be sent to Statewide for review and approval prior to the Agency taking any further action. Agencies must prepare a written justification identifying all relevant facts supporting one or more of the conditions identified in the Rule.

Following are conditions when competition may be waived:

- Competition is not available;
- A needed product or service is available from only one source of supply;
- Competition has been solicited but no responsive offers have been received;
- Standardization or compatibility is the overriding consideration;
- A donation stipulates the source of supply;
- Personal or particular professional services are required;
- A product or service is needed for a person with disabilities and there are overriding considerations for its use;
- Additional products or services are needed to complete an ongoing job or task;
- A particular product or service is desired for educational, training, experimental, developmental or research work;
- Equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
- Items are subject to rapid price fluctuation or immediate acceptance;
- There is evidence of resale price maintenance or other control of prices or collusion on the part of persons or entities that thwarts normal competitive procedures unless otherwise prohibited by law;
- A purchase is being made and a price is available from a previous contract;
- The requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); or
- A used item is available on short notice and subject to prior sale.

In all cases, when a waiver is contemplated, competition must be sought whenever practicable. In cases where competition is waived, justification for waiver must be made a part of the procurement record.

17. AWARD RECOMMENDATION

After the Agency has completed their evaluation and has a recommendation for an award, they are to write up their award recommendation on Agency letterhead and send it to Statewide. This award recommendation letter should contain the following information at a minimum:

- The Vendor(s) the Agency is recommending for award,
- The amount of the award,
- The contract term of the award,
- Reasons why the Vendor(s) was chosen; this can be their strengths and weaknesses, their score, etc. It is determined by your evaluation criteria,
- Reasons why the other Vendor(s) were not chosen, see above.

If the procurement has been designated a Project, then ITS Enterprise Architecture Office and
OSBM review of the award recommendation must occur before submittal to the Statewide IT Procurement Office. The Agency should get written approval from the ITS Enterprise Architecture Office and OSBM and provide that with their award recommendation letter.

18. CONTRACT MANAGEMENT

18.1 Post Award Conference

The post award conference is an orientation meeting designed to get the contract off to a good start. It is an opportunity for those responsible for administering the contract to meet with those who negotiated and executed the contract and to ensure that all parties have a clear understanding of all contract terms and requirements.

The Agency Project Manager, with support from the Agency Contract Administrator and the Agency Legal representative, is responsible for:

- Determining the necessity for the conference
- Setting up the conference (time, date, and place)
- Designating attendees
- Establishing the agenda
- Preparing documentation after the conference
- Monitoring Performance

18.2 Receiving, Inspecting and Testing

The receiving Agency will inspect all materials, supplies, and equipment upon delivery to ensure compliance with the contract requirements and specifications.

18.3 Wrong/Defective/Missing Items

When goods or services fail to meet the requirements of the contract, the Agency that issued the award is responsible for resolving the discrepancy. (9 NCAC 06B.0501 - .0502, 06B.0601 - .0603) If the wrong or defective items are delivered and the vendor requires that the items be returned, they will be returned at the vendor’s expense. The vendor may not charge additional transportation fees when shipping the corrected items.

18.4 Modifying a Contract

An Agency or Statewide may modify a contract by written Amendment if it is determined to be advantageous to the State. If a modification to a contract causes an increase to the total amount of the contract and the revised total amount exceeds the delegation, the Agency must submit all proposed changes to Statewide for written approval regardless of what Agency processed the original procurement. One type of modification may be a request by the issuing Agency to extend the termination dates on the contract. (See 9 NCAC 06B.0504 Modification of Contract Specifications, 06B.0703 Extension of Contract Termination Dates)

18.5 Contract Administration

A primary purpose of contract administration is to ensure that the vendor performs to the best degree possible. Satisfactory performance occurs when a vendor is providing the State timely delivery of the services or goods specified in the contract, and the vendor is complying with all terms and conditions of the contract. The ultimate goal is to get maximum performance from the vendor. The relationship between the vendor and the State should be a cooperative one.

The most critical factor in monitoring performance is achieving full understanding of the Contract terms of the Statement of work. The Agency Contract Administrator must be in
agreement at the outset as to what constitutes acceptable performance. To do this they should:

- Work with the end user to understand the contract and/or statement of work as well as the intent of the contract.
- Conduct a thorough team review of the Contract Administration Plan.
- Obtain the concurrence of the vendor when he starts to perform work on the contract.
- Monitor the deliveries and/or services delivered under the contract and compare it against the contract baseline.

### 18.5.1 Quality Assurance

Quality assurance involves determining the quality of a vendor's performance as measured by its contractual obligations. The primary functions under quality assurance are inspection and acceptance. These functions are performed by the Agency Contract Administrator who then provides the Agency Project Manager with documentation to support any follow-up action (such as sending a letter informing the vendor of nonconforming services).

Quality assurance, vendor performance and acceptance are particularly critical in IT projects and should be carefully considered when preparing solicitation documents, negotiating, and drafting contract terms; see G.S. 147-33.72C for contractual requirements.

### 18.5.2 Vendor Performance

The Agency that issued a contract has the primary responsibility of administering the contract. However, when assistance is required or it becomes apparent that completion of any identified milestone is going to be late, the Agency must notify Statewide in writing.

When a problem arises with a vendor, whether it is late delivery, incorrect items shipped, etc., the first step should be to contact the vendor directly in an effort to resolve the problem. If the problem is not resolved satisfactorily within a reasonable time or it becomes a recurring problem, the problem should be reported to Statewide via the Vendor Complaint Form. When a complaint is received, Statewide will work with the Agency and the vendor to resolve the complaint. Statewide will maintain a record of all written complaints to determine whether a vendor is performing responsibly. When it is determined that a vendor is not performing responsibly, the vendor complaint forms and all associated written information may be used to debar the vendor from participating in IT procurement transactions with Agencies for a period of time that is determined to be suitable. The vendor will be notified in writing of any action taken by the Agency or ITS against the vendor regarding default performance or debarment. Vendor performance information will also be available to Agencies making their own IT procurements. Only vendor complaint information received in writing will be used for these purposes, so Agencies must make all efforts to submit vendor complaints in writing to Statewide IT Procurement.

When a contract awarded by Statewide IT Procurement provides for liquidated damages or other late penalties, final authority to impose or waive such penalties rests with Statewide. When penalties appear to be indicated, a thoroughly documented recommendation must be prepared by by the Agency and submitted to Statewide.
18.5.3 **Contract Closeout**

Contract closeout is the responsibility of the Agency that issued the award. Closeout occurs when:

- All goods and/or services are received and accepted
- Final invoice for accepted goods and services is received and paid
- All contract options, if any, have expired
- Lease/rental contract period has expired

19. **MISCELLANEOUS PROCEDURES**

19.1 **Rentals/Leases/Installment Purchases**

Contracts for the rental or lease of commodities shall be handled under the same rules applicable to all other IT purchases.

19.1.1 **Rental/Lease Contracts**

Under the rental or lease contract, there cannot be any obligation to purchase the item.

19.1.2 **Lease Purchase Contract**

This is a procurement option that is available when the intent of the state in obtaining ownership is uncertain or when it is in the best interest of the state to delay the ownership.

The contract must provide an option or obligation to purchase. Third party financing is not used.

Final ownership transfers only when the option to purchase is exercised or when the time for the obligation to purchase is reached.

The contract may also include options to upgrade the item during the lease period, which may be exercised without re-bidding the contract.

19.1.3 **Installment Purchase Contract (Third Party Financing)**

This type of procurement is used when ownership of the item at time of possession is intended and financing is arranged through a third party. The property purchased may provide a security interest to secure payment from the third party. If the goods are on a term contract and third party financing is being used, the item is purchased from that contract. If the item is on a term contract, but financing is not through a third party (i.e. term vendor has offered financing), the item would not be considered on the contract. The purchase of the item would be processed as an open market item purchase that would allow vendors to bid on just the commodities, just the financing, or on both commodities and financing. Term and non-term vendors could submit offers under the open market procurement.

When the goods are not on a term contract and third party financing is involved, the contract for the item is handled first to determine the price. The item solicitation must include a provision that award of contract is contingent upon obtaining satisfactory financing. All agencies shall handle the financing part of the procurement in the same manner as a contractual service contract is handled as stated in this manual.

The financing contract should also include an option for early payment without penalty.
19.2 Records Maintenance

During the procurement process, all paper and electronic records will be labeled individually to allow easy retrieval; see (9 NCAC 06B.1402). Procurement File records include:

- Requisition
- Required approvals to proceed with purchase
- All offers - original offers if in writing, or written documentation of verbal offers
- Vendor-selecion justification or reason for award cancellation
- Evaluation worksheets or other evaluation documentation
- Distribution list, if used
- Written justification for waiver or emergency purchase
- Tabulation of offers received
- Copy of purchase order(s) or certification to Agency authorizing the issuance of the order(s).
- Related correspondence
- Reason(s) for receiving only one offer in response to a solicitation
- Negotiated contracts
- Reasons for not accepting technical proposals
- Board of Awards decision records
- Contract certification documents issued by Statewide
- The issuing Agency must maintain all purchasing records for a minimum of five years following the expiration/completion date of the contract. Except where excluded by state law (i.e. trade secrets, confidentiality), these documents are public record.

19.3 Compliance Reviews

See IT Procurement rule 09 NCAC 06B .1305 for an overview of the compliance reviews process.

20. EMERGENCY/PRESSING NEED PURCHASES

20.1 Definitions

**Emergency** – "Emergency situations" are defined as circumstances that endanger lives, property, or the continuation of a vital program, as determined by the purchasing Agency head, and that can be rectified only by immediate purchases or rental of goods or services. The existence of such condition must create an immediate and serious need for supplies, goods and/or services that cannot be met through normal procurement methods.

**Pressing Need** - "Pressing need" is defined as a need arising from unforeseen causes including delay by vendors, delay in transportation, breakdown in machinery, or unanticipated volume of work, and which can be satisfied only by immediate purchase (or rental) of equipment, supplies, materials, or contractual services. Pressing need does not include failure to plan a purchase in advance of a need.

20.2 Methods

Agencies may negotiate with a potential vendor (s) to acquire the quality of goods or services needed at the best possible price, delivery, terms and conditions.

A solicitation document requesting or invitation an offer(s) must be issued, with Standard terms and conditions unless circumstance prohibit.

When an emergency or pressing need procurement is necessary and the expenditure is over the Agency delegation, prior verbal approval must be obtained from Statewide IT Procurement unless the purchase must be made outside normal business hours or when State offices are otherwise closed. Whether or not prior approval was possible, if the
expenditure is over the delegation, an explanation of the emergency or pressing need procurement must be reported in writing to Statewide.