



# Review of Changes to the NC Administrative Code

## Division of Purchase & Contract

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# Review of Changes to the NC Administrative Code Chapter 5 – Purchase and Contract 01 NCAC 05A.0112 - 01 NCAC 05B.0316 Division of Purchase & Contract Session #1

**Kimberly Williams, Deputy State Purchasing Officer, Strategic Sourcing**  
**Justin Sutton, Deputy State Purchasing Officer, Legal**

# AGENDA

- **LOCATING THE NORTH CAROLINA ADMINISTRATIVE CODE**
- **REVIEW OF REVISIONS TO NCAC-Chapter 5, SUBCHAPTER 05A and 05B :**
  - 01 NCAC 05A .0112 DEFINITIONS
  - 01 NCAC 05B.0103 CONFIDENTIALITY
  - 01 NCAC 05B.0207 COPIES OF SPECIFICATIONS
  - 01 NCAC 05B.0208 QUALIFIED PRODUCTS LIST
  - 01 NCAC 05B.0210 CONFIDENTIALITY
  - 01 NCAC 05B.0303 TELEGRAPH, FACSIMILE, AND TELEPHONE OFFERS
  - 01 NCAC 05B.0304 RECALL OF OFFERS
  - 01 NCAC 05B.0305 PUBLIC OPENING
  - 01 NCAC 05B.0306 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS
  - 01 NCAC 05B.0308 EXTENSION OF ACCEPTANCE TIME
  - 01 NCAC 05B.0309 EVALUATION
  - 01 NCAC 05B.0310 NOTIFICATION OF AWARD
  - 01 NCAC 05B.0313 TABULATIONS AND ABSTRACTS
  - 01 NCAC 05B.0316 ADVERTISEMENT REQUIREMENTS

# LOCATING THE ADMINISTRATIVE CODE

Go to: <http://ncadmin.nc.gov/pandc>

The screenshot shows a web browser window with the URL <https://ncadmin.nc.gov/about-doa/divisions/purchase-contract>. The browser's address bar and tabs are visible at the top. The website's header includes the NC Administration logo, a search bar, and navigation links for NC.GOV, AGENCIES, JOBS, and SERVICES. A main navigation menu contains links for Home, Citizens, Businesses, Government Agencies, Advocacy, News, About DOA, and Contact. The breadcrumb trail reads: Home » About DOA » Divisions » Purchase and Contract. The main content area features a large heading 'Purchase and Contract' with a blue underline. Below this is a carousel slide with a background image of a desk with a laptop and a smartphone. The slide text reads: 'News, Notices and Publications' followed by 'Missed an announcement? The Division of Purchase & Contract is pleased to introduce its newest Web page! Start here to stay abreast on what's happening in North Carolina procurement.' A button at the bottom of the slide says 'Click here to read more' with a right-pointing arrow. The carousel has navigation arrows on the left and right sides and a set of three dots at the bottom center.

# LOCATING THE ADMINISTRATIVE CODE

The screenshot shows the website <http://ncadmin.nc.gov/about-doa/divisions/purchase-contract>. The navigation menu includes Home, Citizens, Businesses, and Government Agencies. The main content area features eight tiles for various procurement-related topics. A red box highlights the 'Procurement Rules & Manuals' tile, with a red arrow pointing to it from a text box that reads: 'Scroll to bottom of P&C homepage and select 'Procurement Rules & Manuals''. Below the tiles is a 'Helpful Resources' section with several links.

**Scroll to bottom of P&C homepage and select 'Procurement Rules & Manuals'**

**Forms & Documents**  
PURCHASE & CONTRACT

**Bid Opportunities**  
PURCHASE & CONTRACT

**Procurement Transformation**  
PURCHASE & CONTRACT

**Quality Acceptance Inspections**  
PURCHASE & CONTRACT

**NIGP Commodity Codes**  
PURCHASE & CONTRACT

**Procurement Rules & Manuals**  
PURCHASE & CONTRACT

**Training Catalog**  
PURCHASE & CONTRACT

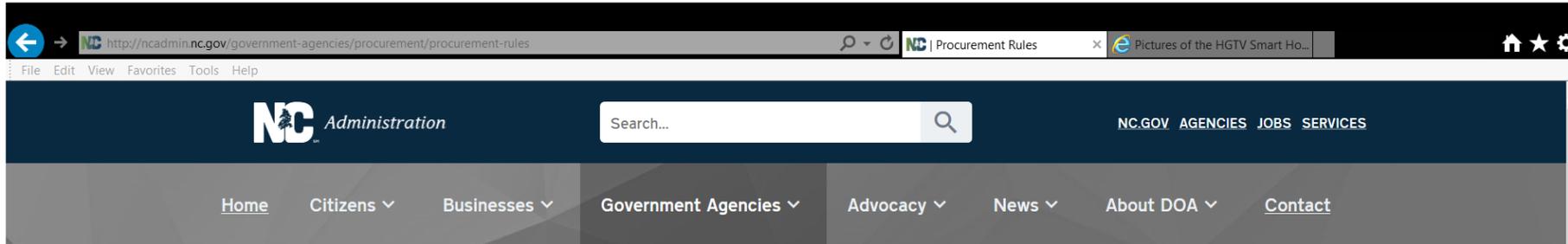
**Compliance**  
PURCHASE & CONTRACT

## Helpful Resources

[CAGP Link](#) [Correction Enterprises](#) [Historically Underutilized Businesses](#)

[Department of the Secretary of State](#) [Federal Surplus Property](#) [NC Association of Rehabilitation Facilities](#)

# LOCATING THE ADMINISTRATIVE CODE

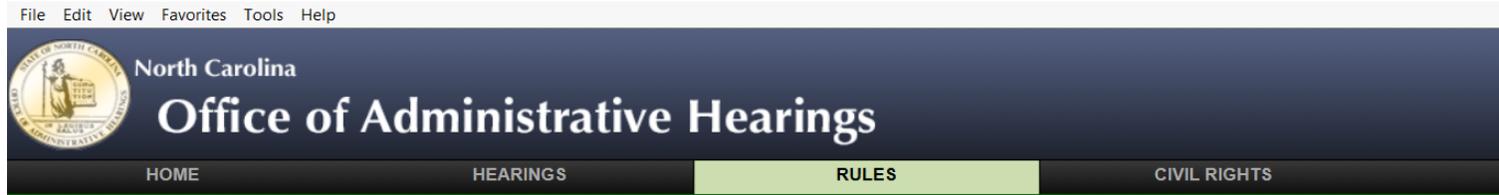


## Procurement Rules

Select 'Purchase & Contract Administrative Code'

A grid of eight dark blue rectangular buttons, each with a white icon and text. The buttons are arranged in two rows of four. The first row contains: 'Contract Administration &amp; Monitoring Guide' (book icon), 'Contracts over \$1,000,000' (scales icon), 'Proposed High Value Contract Form' (scales icon), and 'Legal Review of High Value Procurements' (scales icon). The second row contains: 'North Carolina Procurement Manual' (book icon), 'Purchase &amp; Contract Administrative Code' (scales icon), 'Reciprocal Preference Law' (scales icon), and 'Responsibilities for Legal Review of High Value Procurement' (scales icon). A red arrow points from the text box above to the 'Purchase &amp; Contract Administrative Code' button.

# LOCATING THE ADMINISTRATIVE CODE



Select HTML or MS Word

Select any subchapter

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# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05A – DIVISION OF PURCHASE AND CONTRACT

### 01 NCAC 05A .0112 DEFINITIONS

- Extensive list of new definitions (From 4 definitions to 47 Definitions)
- Provides Clarity on Terms, such as:
  - ▶ Deficiency
  - ▶ Emergency Situations
  - ▶ Negotiation
  - ▶ Pressing Need
  - ▶ Progressive Award
  - ▶ Responsible
  - ▶ Responsive
  - ▶ Requirement
  - ▶ Specification
  - ▶ Weakness

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .0103 CONFIDENTIALITY

All information and documentation relative to the development of a contractual document (~~Request for Quotation, Invitation for Bids, 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 (~~See Rules .0210, .0309, .1501 and .1518 of this Subchapter~~).

### TO:

#### 01 NCAC 05B .0103 CONFIDENTIALITY

(a) All information and documentation **whether Electronic, Written, or verbal** relative to the development of a Solicitation for a proposed **or pending** Procurement **shall be confidential**, except as deemed necessary by the Purchaser to develop a complete contractual document. Such material shall remain confidential until the award of contract **or action has been taken by the Purchasing Agency to cancel the Procurement.**

(b) **All information and documentation relative to the development of a Specification shall be confidential until a contract is entered into by the Purchasing Agency and the Vendor in accordance with G.S. 143-52(a).**

(c) **Trade secrets, test data and similar proprietary information that the Vendor does not wish disclosed shall be identified as follows:**

(1) each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL"; and

(2) if only a portion of a page marked "CONFIDENTIAL" contains trade secret information, the trade secret information shall be designated with a contrasting color or by a box around such information.

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0207 COPIES OF SPECIFICATIONS

~~Copies of standard specifications shall be distributed among interested bidders and in addition shall be available for public inspection at the Division of Purchase and Contract or through available electronic media. Copies of standard specifications may be provided interested parties.~~

## TO:

### 01 NCAC 05B .0207 COPIES OF SPECIFICATIONS

***Repealed Eff. October 1, 2019.***

### 01 NCAC 05B .0208 QUALIFIED PRODUCTS LIST

~~A qualified products list (QPL) is a type of specification which may be adopted as a standard by the Division of Purchase and Contract. The essential characteristic of this procedure is the examination and prequalification of brands and models of products on the basis of 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. Sources for manufacturers are the Division's active bidder mailing lists, if available, and notifications of interest received in advance from other firms. The Division 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.~~

### 01 NCAC 05B .0208 QUALIFIED PRODUCTS LIST

***Repealed Eff. October 1, 2019.***

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0210 CONFIDENTIALITY

All information and documentation relative to the development of a specification shall be deemed confidential in nature until the adoption of that specification or an award of contract if developed for a specific procurement or contract, whichever is later. (See Rules .0210, .0309, .1501 and .1518 of this Subchapter.)

## TO:

### 01 NCAC 05B .0210 CONFIDENTIALITY

*Repealed Eff. October 1, 2019.*

### 01 NCAC 05B .0313 TABULATIONS AND ABSTRACTS

Telephone, electronic, and written requests for detailed or written tabulations and abstracts of offers shall not be honored.

01 NCAC 05B .0313 TABULATIONS AND ABSTRACTS *Repealed Eff. October 1, 2019.*

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0303 ~~TELEGRAPH~~, FACSIMILE, AND TELEPHONE OFFERS

~~Telegraph~~, facsimile, and telephone offers shall not be accepted in response to solicitations that are required to be sealed.

## TO:

### 01 NCAC 05B .0303 ELECTRONIC, FACSIMILE, AND TELEPHONE OFFERS

E-mail, facsimile, and telephone Offers shall not be accepted in response to a Solicitation that is required to be sealed pursuant to Rule .0301 of this Section. The use of digital or Electronic Signatures on Electronic Offers must be consistent with G.S. 66-312(9).

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0304 RECALL OF OFFERS

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

## TO:

### 01 NCAC 05B .0304 RECALL OF OFFERS

Offers may be recalled prior to opening upon **Written and** signed request from an authorized agent of the **Vendor to the Purchasing Agency. A record of the recall shall be maintained in the bid file.**

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0305 PUBLIC OPENING

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

~~(b) Under a two step process, the cost/price offer(s) shall not become public record until the technical offer(s) has been evaluated (first step) and then only those offerors determined by the agency which issued the solicitation document to have acceptable technical offers shall have their cost/price offers opened (second step). The cost/price offers from offerors whose technical offers were deemed unacceptable shall remain unopened. The remaining cost/price offers 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 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.~~

## TO:

### 01 NCAC 05B .0305 PUBLIC OPENING

(a) Pursuant to G.S. 143-52(a) the Purchasing Agency shall publicly open and tabulate all Offers (except those that have been previously withdrawn, or Voided Bids) at the time, date, and place identified in the Solicitation. The Tabulation shall be made public at the time it is created. There shall be at least two Purchasing Agency employees present at the opening when a Sealed Offer is required.

(b) When Negotiation after receipt of Offers is authorized pursuant to G.S. 143-49 and Rule .0503 of this Subchapter, only the names of offerors and the Goods and Services offered shall be tabulated at the time of opening. The cost and price Offer shall become available for public inspection at the time of the award.

(c) Under the two-step process outlined in Paragraph (b) of this Rule, the Technical Offers shall be reviewed for compliance with Rule .0301 of this Subchapter. Only the cost and price Offers for Offers found to be in compliance with Rule .0301 of this Subchapter will then be publicly opened. At least two days prior notification will be given to Vendors of the time and place of the opening.

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0306 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS

~~No late offer, late modification, or late withdrawal shall be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the action or inaction of agency personnel directly serving the procurement process. The offeror shall have his offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available.~~

## TO:

### 01 NCAC 05B .0306 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS

All Offers or modifications must be received by the due date, time and location as specified in the Solicitation document. Any Offer or modification received after the specified time shall not be considered. Withdrawal of an Offer must be requested in writing prior to the contract award.

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0308 EXTENSION OF ACCEPTANCE TIME

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

## TO:

### 01 NCAC 05B .0308 EXTENSION OF ACCEPTANCE TIME

When in the public interest, **vendors** may be requested **by the Purchasing Agency to extend the time within which an Offer is to be accepted.**

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0309 EVALUATION

(a) 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 ~~procurement~~ document.

~~(b) An unexecuted offer or an offer without a delivery time shall be rejected.~~

~~(c) 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 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 provisions of Rules .1501 and .1518 of this Subchapter.~~

## TO:

### 01 NCAC 05B .0309 EVALUATION

(a) In determining the award of Contract, **Responsive 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.

(b) Possession of Offers, including any accompanying information submitted with the Offers, shall be limited to persons in the Purchasing Agency who are responsible for handling the Offers and accompanying information, and to others determined necessary by the Purchasing Agency for the purpose of evaluation and award of Contracts. No Vendor shall participate in the evaluation process nor submit any additional information or materials during the period of evaluation, unless requested by the Purchasing Agency.

(c) Evaluation of Offers shall be conducted by the Purchasing Agency. Following evaluation of the Offers by the Purchasing Agency, a recommendation shall be submitted to the Division to review for compliance with Rule .0301 of this Subchapter. Evaluation scoring sheets, and other materials utilized to determine the ranking or assessment of the Responsive Offers shall be retained in the Agency Procurement file.

(d) If a Vendor has not met the evaluation criteria provided in the Solicitation document, a written determination of such status shall be made, including the reason(s) therefore with any supporting documentation in the Procurement file.

(e) The failure of a Vendor to provide requested information to the Purchasing Agency in connection to a Clarification or mandatory addendum shall be sufficient justification for a determination of not having met the criteria.

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0310 NOTIFICATION OF AWARD

~~If a solicitation is required to be advertised through the Division of Purchase and Contract, then notice of the resulting contract award shall be posted via the Division of Purchase and Contract's home page by the agency issuing the solicitation document in accordance with Rule .0316 of this Section. In addition, after contracts are awarded, successful companies shall be notified in writing or electronically by the agency issuing the solicitation document.~~

## TO:

### 01 NCAC 05B .0310 NOTIFICATION OF AWARD

- (a) Following the award of a Contract in accordance with Rule .0301 of this Section, the Purchasing Agency shall notify the winning Vendor in writing. Written notifications may include letter or Electronic means, such as posting on the Electronic Bid System or e-mail.
- (b) Purchasing Agencies shall post Contract awards in the same manner described in Rule .0316 of this Section.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .0316 ADVERTISEMENT REQUIREMENTS

(a) ~~Unless already required by statute, all advertisements required by rule shall be through the Division of Purchase and Contract via the Division's home page on the internet. If advertisement is required by rule, 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.~~

(b) ~~Agencies required by rule to advertise their solicitations shall electronically transmit the required data directly to the Division'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, time, location, contact person and the contact person's phone number.~~

(c) ~~Within three agency working days from the award of a contract that has been advertised through the Division, agencies shall electronically transmit an award notice directly to the Division'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.~~

### TO:

#### 01 NCAC 05B .0316 ADVERTISEMENT REQUIREMENTS

(a) Unless otherwise directed by statute or excepted pursuant to Paragraph (d) of this Rule, all advertisements required by Rule .0301 of this Section shall be posted through the Division's Electronic Bid System for at least 10 calendar days, unless a memo requesting a waiver is received by the Division and approved by the SPO in accordance with the Rule .1401 of the Section. The Purchasing Agency may also solicit bids via direct mailings or additional advertisement so long as the requirements of this Paragraph are met.

(b) The required data to be advertised shall include the complete Solicitation document with agency name, buyer name, phone number and address for accessing hard copies of the Solicitation, solicitation identification number, title, description of the commodity, service or printing requirement, and the opening date, time and place.

(c) Within three working days from the award of a contract that has been advertised through the Division's Electronic Bid System, Purchasing Agencies shall transmit an award notice to the Division's Electronic Bid System. The award notice shall be posted for at least 30 consecutive calendar days. This award notice shall identify the contract and award information.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .0316 ADVERTISEMENT REQUIREMENTS

(d) Exceptions to this Rule are as follows:

- ~~(1) When it is deemed by the agency's executive officer or the officer's 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 the Division, so the Division 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, networking difficulties, or insufficient copies of samples for a printing job.~~
- ~~(2) If there is an attachment to a solicitation that the agency determines will not be electronically transmitted, then the solicitation document, when it is electronically transmitted, shall include instructions to contact the agency which issued the solicitation to obtain the attachment.~~
- ~~(3) If an agency determines that it is not feasible to electronically transmit a particular solicitation document through the Division's home page, then the agency shall electronically transmit a summary notice in the same way as if it had electronically transmitted the solicitation document. The summary notice will instruct anyone inquiring about the solicitation on the Division's home page to contact the agency for a hard copy.~~

### TO:

#### 01 NCAC 05B .0316 ADVERTISEMENT REQUIREMENTS

(d) Exceptions to this Rule are as follows:

- (1) If the Purchasing Agency is unable to transmit the advertisement or award notice electronically, that agency may submit the data to the Division to transmit electronically, or the agency may place the advertisement (excluding the complete Solicitation document) via newspaper. If advertised via newspaper, the agency shall be responsible for placing the advertisement and no award notice shall be required.
- (2) If a Purchasing Agency is unable to electronically transmit an attachment to the Solicitation, the Purchasing Agency shall include instructions to obtain the attachment in the advertisement.
- (3) If a Purchasing Agency is unable to electronically transmit a Solicitation, the Purchasing Agency shall electronically transmit a summary notice that provides interested Vendors with instructions to obtain a copy of the Solicitation.
- (4) Reasons a Purchasing Agency may be unable to electronically transmit the documents listed in this Paragraph include computer equipment failure, networking difficulties, or insufficient copies of samples for a printing job.



# Review of Changes to the NC Administrative Code

## Chapter 5 – Purchase and Contract

### 01 NCAC 05B.0317 - 01 NCAC 05B.1510

#### Division of Purchase & Contract

#### Session #2

**Kimberly Williams, Deputy State Purchasing Officer, Strategic Sourcing**  
**Justin Sutton, Deputy State Purchasing Officer, Legal**

# AGENDA

- **REVIEW OF REVISIONS TO NCAC-Chapter 5, SUBCHAPTER 05B**
  - 01 NCAC 05B.0317 MANDATORY CONFERENCES/SITE VISITS
  - 01 NCAC 05B.0501 REJECTION OR CANCELLATION OF OFFERS
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  - 01 NCAC 05B.1201 USE
  - 01 NCAC 05B.1501 CONFIDENTIALITY
  - 01 NCAC 05B.1507 CHANGE IN CORPORATE STRUCTURE
  - 01 NCAC 05B.1510 USE OF PURCHASING POWER FOR PRIVATE GAIN

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .0317 MANDATORY CONFERENCES/SITE VISITS

~~(a) It is recommended, except in unusual cases, for agencies only to urge and caution potential offerors to attend scheduled conferences or site visits.~~

~~(b) When a solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, 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).~~

~~(c) 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 by following the rules of this Subchapter, 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.~~

~~(d) Any and all questions by a potential 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 from whatever source are of no effect.~~

### TO:

#### 01 NCAC 05B .0317 MANDATORY CONFERENCES/SITE VISITS

(a) When a Solicitation requires potential Vendors to attend a mandatory conference or mandatory site visit, the date, time, location, and other details of the conference or site visit shall be given in the Solicitation, and in the advertisement when required by Rule .0316 of this Section.

(b) If only one Vendor attends the mandatory conference or mandatory site visit, the Purchasing Agency may conduct or postpone the conference or site visit. The Purchasing Agency shall review the Solicitation and factors set out in Rule .1401 of this Section to determine whether any Competition is available and why only one potential Vendor attended. The Purchasing Agency may schedule another conference or site visit if it determines that Competition is available, and it would be in the best interest of the State. If it is determined that there is no Competition available, then the Procurement may be subject to approval for a waiver of Competition pursuant to Rules .1401 and .1402 of this Subchapter.

(c) The Purchasing Agency shall document details of the conference or site visit as part of the official Procurement records.

(d) Any and all questions or Clarifications by a potential Vendor regarding a Solicitation shall be addressed to the Purchasing Agency named on the Solicitation. Any and all revisions to the Solicitation shall be made only by written addendum from the Purchasing Agency.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .0501 BASIS FOR REJECTION

~~In soliciting offers, any and all offers received may be rejected in whole or in part. Basis for rejection shall include, but not be limited to, the offer being deemed unsatisfactory as to quantity, quality, delivery, price or service offered; the offer not complying with conditions of the procurement document or with the intent of the proposed contract; lack of competitiveness by reason of collusion or otherwise or knowledge that reasonably available competition was not received; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances which prevent determination of the lowest responsible or most advantageous offer; any determination that rejection would be to the best interest of the state.~~

### TO:

#### 01 NCAC 05B .0501 REJECTION OR CANCELLATION OF OFFERS

- (a) Any Offers received in response to a Solicitation may be rejected. The basis for rejection may include the following:
- (1) the Offer does not address the requirements in the Solicitation for bid regarding quantity, quality, delivery, price or service;
  - (2) the Offer does not comply with the conditions set forth in the Solicitation for bid;
  - (3) the Purchasing Agency determines there is a lack of Competition;
  - (4) the Solicitation contains errors;
  - (5) cancellation of or changes to the project reference in the Solicitation;
  - (6) dual or similar Offers which prevent a Best Value Procurement to be determined; or
  - (7) limitation or lack of available funds of the Purchasing Agency.
- (b) Negotiation may be utilized if permitted by Rule .0503 of this Section.
- (c) If all Offers are rejected, a Solicitation may be cancelled in its entirety or otherwise handled in accordance with the provisions of this Chapter.

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .0502 PUBLIC RECORD

Action in rejecting offers in whole or in part shall be made a matter of record.

## TO:

### 01 NCAC 05B .0502 PUBLIC RECORD

*Repealed Eff. October 1, 2019.*

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .0503 NEGOTIATION

~~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.~~

### TO:

#### 01 NCAC 05B .0503 NEGOTIATION

- (a) If the Purchasing Agency does not receive a Responsive Offer to a Solicitation and determines that soliciting Offers again would not yield a different result, the Purchasing Agency may negotiate with Vendors in the Competitive Range or reject all Offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement. Negotiations may also be conducted under conditions that merit a waiver of Competition pursuant to Rule .1401 of this Section.
- (b) Negotiations shall be conducted by the Purchasing Agency if the Solicitation is under its Bid Value Benchmark or General Delegation. A Purchasing Agency may request the participation of the Division in any Negotiation.
- (c) Negotiations shall be memorialized by a written agreement executed by the parties and issued by the Division.
- (d) All Negotiation results shall be documented in writing for public record.

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .1108 EXTENSION OF CONTRACT TERMINATION DATES

When in the public interest, contractors may be requested to extend the scheduled termination dates of contracts.

## TO:

### 01 NCAC 05B .1108 EXTENSION OF CONTRACT TERMINATION DATES

When in the best interest of the State, Vendors may be requested to extend the scheduled termination dates of contracts. Extensions shall not result in a change in the prices stated in the original contract unless agreed to by the Purchasing Agency in writing. Extensions that result in an annual contract value exceeding a Purchasing Agency's delegation must be submitted to the Division for approval based on the determining factors set forth in Rule .1102 of this Section.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1201 USE

~~(a) 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.~~

~~(b) Notwithstanding the necessity for awards to more than one supplier in the case of some indefinite quantity 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 principles of competition. Quantities shall not be divided among companies on definite quantity requirements unless and except as provided in the procurement document.~~

### TO:

#### 01 NCAC 05B .1201 USE

(a) The Purchasing Agency may make a partial, multiple or Progressive award for the following reasons:

- (1) there are insufficient funds to make a full award;
- (2) a legislative mandate;
- (3) if the Purchasing Agency determines that it is in the best interests of the State to award separately by items; or
- (4) if more than one supplier is needed to meet the Specifications as to quantity, quality, delivery, services, or geographical areas as set forth in the Solicitation.

(b) Multiple awards shall be made consistent with the applicable provisions of G.S. 143-52.3(5).

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .1501 CONFIDENTIALITY

~~(a) 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.~~

~~(b) To promote maximum competition and to protect the public competitive procedure from being used to obtain information which would normally not be available otherwise, the agency which issued the solicitation document 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 insure the integrity of the public purchasing process.~~

## TO:

### 01 NCAC 05B .1501 CONFIDENTIALITY

***Repealed Eff. October 1, 2019.***

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1507 CHANGE IN CORPORATE STRUCTURE

~~In cases where contractors are involved in corporate consolidations, acquisitions or mergers, the agency which issued the solicitation document resulting in the contract may negotiate agreements for the transfer of contractual obligations and the continuance of contracts within the framework of the new corporate structures but with the understanding that the state's contracts are not instruments for sale and shall not be assigned.~~

### TO:

#### 01 NCAC 05B .1507 CHANGE IN CORPORATE STRUCTURE

Contracts following an award to a Vendor are not instruments for sale and shall not be assigned. If a Vendor is involved in corporate consolidations, acquisitions or mergers, the Purchasing Agency may negotiate agreements for the transfer of contractual obligations and the continuance of Contracts if the Purchasing Agency determines that it is in the best interest of the State.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1510 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 employees or other individuals.~~

### TO:

#### 01 NCAC 05B .1510 USE OF PURCHASING POWER FOR PRIVATE GAIN - *Repealed Eff. October 1, 2019.*



# Review of Changes to the NC Administrative Code Chapter 5 – Purchase and Contract 01 NCAC 05B.1511 - 01 NCAC 05D.0209 Division of Purchase & Contract Session #3

**Kimberly Williams, Deputy State Purchasing Officer, Strategic Sourcing**  
**Justin Sutton, Deputy State Purchasing Officer, Legal**

# AGENDA

- **REVIEW OF REVISIONS TO NCAC-Chapter 5, SUBCHAPTER 05B and 05D**
  - 01 NCAC 05B.1511 ANTICOMPETITIVE, DECEPTIVE, AND FRAUDULENT PRACTICES
  - 01 NCAC 05B.1519 PROTEST PROCEDURES
  - 01 NCAC 05B.1521 FAITHFUL PERFORMANCE
  - 01 NCAC 05B.1522 RECIPROCAL PREFERENCE
  - 01 NCAC 05D.0209 RELATIONSHIP OF CONSULTANT TO STATE
  
- **FREQUENTLY ASKED QUESTIONS**

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1511 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 interest. Instances of suspected antitrust violation shall be reported to appropriate law enforcement authorities by the agency which issued the solicitation document.~~

### TO:

#### 01 NCAC 05B .1511 ANTICOMPETITIVE, DECEPTIVE, AND FRAUDULENT PRACTICES

- (a) A Purchasing Agency shall act to prevent the continuance of anticompetitive, deceptive, or fraudulent practices. Anticompetitive practices include actions involving Vendors that restrain trade or commerce or eliminate Competition.
- (b) Anticompetitive, deceptive, or fraudulent practices may be evidenced by one or more of the following:
- (1) conspiracy in restraint of trade or commerce;
  - (2) combination bidding in restraint of trade or commerce;
  - (3) price fixing which may include reliance upon an industry price list;
  - (4) collusion;
  - (5) identical bidding; or
  - (6) agreements to:
    - (A) rotate Offers;
    - (B) share the profits with a Vendor who is not the low Vendor;
    - (C) sublet work in advance of bidding as a means of preventing Competition;
    - (D) refrain from bidding;
    - (E) submit prearranged Offers;
    - (F) submit complementary Offers;
    - (G) set up territories to restrict Competition;
    - (H) alternate bidding; or
    - (I) any other unlawful act in restraint of trade or commerce.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1511 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 interest. Instances of suspected antitrust violation shall be reported to appropriate law enforcement authorities by the agency which issued the solicitation document.~~

### TO:

#### 01 NCAC 05B .1511 ANTICOMPETITIVE, DECEPTIVE, AND FRAUDULENT PRACTICES (Con't)

(c) Agency actions to discourage or prevent the continuance of anticompetitive, deceptive, or fraudulent practices may include the following:

- (1) rejecting the Vendor's Offer;
- (2) awarding a bid to a Vendor with a cost or technical proposal that is evaluated lower than the offending Vendor's proposal; and
- (3) recommending that the SPO debar a Vendor from doing business with the State in accordance with Rule .1520 of this Section.

(d) The Purchasing Agency shall report evidence of anticompetitive, deceptive or fraudulent practices to the Attorney General's office and any other appropriate law enforcement authority.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1519 PROTEST PROCEDURES

~~(a) To insure 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.~~

~~(b) This Rule applies only to contracts with an actual or estimated dollar value over ten thousand dollars (\$10,000). Agencies may establish procedures to handle an offeror's concerns for contracts with less dollar value.~~

~~(c) When an offeror wants to protest a contract awarded by an agency over ten thousand dollars (\$10,000) in value, the agency and the offeror shall comply with the following:~~

~~(1) The offeror shall submit a written request for a protest meeting to the agency's executive officer which shall be received by the agency's executive officer's office 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 five consecutive calendar days of receipt. The offeror's letter shall contain specific reasons and any supporting documentation for why it has 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.~~

### TO:

#### 01 NCAC 05B .1519 PROTEST PROCEDURES

(a) When a Vendor wants to protest a Contract awarded by a Purchasing Agency valued at less than the amount set forth in G.S. 143-53, the Purchasing Agency and Vendor shall comply with the following:

(1) The Vendor shall submit a written request for a protest meeting to the Agency's executive officer or his or her designee within 30 calendar days from the date of the Contract award. The executive officer shall furnish a copy of this letter to the SPO within five calendar days of receipt. The Vendor's request shall contain reasons why it has a concern with the award and any supporting documentation. If the request does not contain this information, or if the executive officer determines that the protest is meritless so that a meeting would serve no purpose, then the executive officer may, within 10 calendar days from the date of receipt of the request, respond in writing to the Vendor and refuse the protest meeting request. A copy of the executive officer's decision letter shall be forwarded to the SPO.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1519 PROTEST PROCEDURES (con't)

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

(3) The agency shall notify the SPO in writing of any further administrative or judicial review of the contract award.

~~(4) The executive officer may appoint a designee to act on the executive officer's behalf under this Rule.~~

~~(d) When an offeror wants to protest a contract awarded by the Secretary over ten thousand dollars (\$10,000) in value, the SPO and the offeror shall comply with the following:~~

~~(1) The offeror shall submit a written request for a protest meeting to the SPO 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 it has 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.~~

### TO:

#### 01 NCAC 05B .1519 PROTEST PROCEDURES (con't)

(2) If the protest meeting is granted, the executive officer shall schedule the meeting within 30 calendar days after receipt of the request, unless mutually agreed. Within 10 calendar days from the date of the protest meeting, the executive officer shall respond to the Vendor in writing with the executive officer's decision **and appeal rights under Article 3 of G.S. 150B**. A copy of the executive officer's decision letter shall be forwarded to the SPO.

(3) The **Purchasing Agency** shall notify the SPO in writing of any further administrative or judicial review of the Contract award.

**(b) When a Vendor wants to protest a Contract awarded by the Secretary valued over the amount set forth in G.S. 143-53, the SPO and Vendor shall comply with the following:**

**(1) The Vendor shall submit a written request for a protest meeting to the SPO within 30 calendar days from the date of the Contract award. The Vendor's request shall contain reasons why it has a concern with the award and any supporting documentation. If the request does not contain this information, or if the SPO determines that the protest is meritless so that a meeting would serve no purpose, then the SPO may, within 10 calendar days from the date of receipt of the request, respond in writing to the Vendor and refuse the protest meeting request.**

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1519 PROTEST PROCEDURES (con't)

~~(2) 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 SPO's decision.~~

### TO:

#### 01 NCAC 05B .1519 PROTEST PROCEDURES (con't)

(2) If the protest meeting is granted, the SPO shall schedule the meeting within 30 calendar days after receipt of the request, unless mutually agreed. Within 10 calendar days from the date of the protest meeting, the SPO shall respond to the Vendor in writing with the SPO's decision and appeal rights under Article 3 of G.S. 150B.

(3) The SPO shall notify the Secretary of any further administrative or judicial review of the Contract award.

# Revisions to the NCAC-Chapter 5

## SUBCHAPTER 05B – PURCHASE PROCEDURES

### FROM:

#### 01 NCAC 05B .1521 FAITHFUL PERFORMANCE

- ~~(a) A bond, or other suitable means of insuring faithful performance, may be required of the contractor at the contractor's expense.~~
- ~~(b) 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.~~

### TO:

#### 01 NCAC 05B .1521 FAITHFUL PERFORMANCE

- A Solicitation and Contract may include terms ensuring a Vendor's performance such as:
- (1) a bond, or similar assurance;
  - (2) liquidated damages;
  - (3) a percentage of the Contract value held as a retainage;
  - (4) withholding final payment contingent on acceptance of the final deliverable; and
  - (5) any other provision that assures performance of the Vendor.

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05B .1522 RECIPROCAL PREFERENCE

- ~~(a) Each solicitation document used to obtain contracts for equipment, materials, supplies, and services that exceed twenty five thousand dollars (\$25,000) in value shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the solicitation document. This shall not prevent the agency that issued the solicitation document from investigating this information and concluding that the principal place of business is different, according to their interpretation of G.S. 143-59(c).~~
- ~~(b) A reciprocal preference shall not be used when procurements are being made under G.S. 143-53(a)(5) and G.S. 143-57.~~
- ~~(c) For the purpose of this Section, a bidder and offeror, as well as bid and proposal, are interchangeable.~~

## TO:

### 01 NCAC 05B .1522 RECIPROCAL PREFERENCE

- (a) Each Solicitation used to obtain contracts for Goods and Services that exceed thresholds mandated in G.S. 143-59(b) shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the Solicitation. This shall not prevent the Purchasing Agency that issued the Solicitation from investigating this information and concluding that the principal place of business is different, as defined by G.S. 143-59(c).
- (b) A reciprocal preference shall not be used when Procurements are exempted under G.S. 143-59(d).

# Revisions to the NCAC-Chapter 5 SUBCHAPTER 05B – PURCHASE PROCEDURES

## FROM:

### 01 NCAC 05D .0209 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.~~

## TO:

### 01 NCAC 05D .0209 RELATIONSHIP OF CONSULTANT TO STATE –

*Repealed Eff. October 1, 2019.*

# FREQUENTLY ASKED QUESTIONS

## QUESTIONS AND ANSWERS

**QUESTION:** Have the procurement templates and the Procurement Manual been updated to reflect the changes to the vendor instructions regarding confidentiality? If not, what is the ETA on the revised templates?

**ANSWER:** The procurement templates and Procurement Manual are currently in the process of being updated.

**QUESTION:** From a legal standpoint, is this saying IPS/NC Bids advertising of a bid request is an option or a requirement if other advertising methods are chosen?

**ANSWER:** The use of IPS/NC Bids is not an option. See 01 NCAC 05B .0316 ADVERTISEMENT REQUIREMENTS.

**QUESTION:** What is the process of having questions answered after the webinars and presentations are posted?

**ANSWER:** Please review the Revised Administrative Code. If you have additional questions, email your questions to [doa.pchelpdesk@doa.nc.gov](mailto:doa.pchelpdesk@doa.nc.gov). (Include "Questions Regarding the Revised NC Administrative Code" in your subject line.)