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Impact Summary
State Government: Yes
Local Government: Yes
Private Industry: Yes
Substantial Impact: Yes

Authority
G.S. 66-58.5 Validity of Electronic Signatures;
G.S. 66-325 Time and Place of Sending and Receipt;
G.S. Chapter 75: Monopolies, Trusts and Consumer Protection;
G.S. 133 Public Works, Article 3: Regulation of Contractors for Public Works;
G.S. 143-52.1 Board of Awards;
G.S. 143-135.9 Best Value Procurements;
G.S. 147 State Officers, Article 3D: State Information Technology Services;
G.S. 147-33.72C Project Approval Standards;
G.S. 147-33.76 Qualification, Appointment, and Duties of the State Chief Information Officer;
G.S. 147-33.82 Functions of the Office of Information Technology Services;
G.S. 147-33.91 Telecommunications Services; Duties of State Chief Information Officer with Respect to State Agencies;
G.S. 147-33.95 Procurement of Information Technology;
G.S. 147-33.101 Board of Awards Review;
G.S. 150B Administrative Procedure Act, Article 4: Publication of Code and Register;
G.S. 150B-4 Declaratory Rulings; 150B-38 Scope; Hearing Required; Notice; Venue; and
G.S. 150B-40 Conduct of Hearing; Presiding Officer; Ex Parte Communication.

Necessity
The Information Technology Procurement rules contained in 09 NCAC 06A and 06B were adopted as temporary rules effective on January 1, 2000 and as permanent rules effective on August 1, 2000. With few exceptions, these rules have not been amended in the intervening twelve years. The procurement process has undergone many advances in technology during this time, and it is necessary to update the rules to address these changes. The proposed amendments to these rules (see Appendix) will clarify the IT procurement process for State agencies and vendors. They will also encourage a more transparent process where vendors may receive feedback from State agencies regarding bids and awards in a debriefing session. This is a crucial step to help vendors understand why they were not granted a bid award. Vendors will be able to use this information to write future bids that are more in line with the State’s needs, thereby resulting in better bids for State agencies to review. Negotiations with vendors will be allowed earlier in the procurement process and in different types of procurements, which will benefit all parties as the end result will be bids which are fine-tuned to more specifically meet the agency’s needs. The more transparent procurement process will save time for both State agencies and vendors as questions on both sides will be answered in a timely manner. Currently, the rules specifically prohibit electronic submission of bids. The proposed amendments encourage electronic bid submissions which will result in faster submissions and will reduce or eliminate vendor printing costs.
Summary of Impact

Table 1 below presents a summary of costs and savings that the Statewide IT Procurement Office, State government agencies (including ITS), local governments, and other vendors would incur as a result of this rule change.

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td>Statewide IT Procurement Office (SITPO)</td>
<td>$13,333</td>
<td>$13,560</td>
<td>$14,025</td>
<td>$14,752</td>
<td>$15,781</td>
<td>$17,169</td>
<td>$18,997</td>
<td>$21,376</td>
<td>$24,462</td>
<td>$28,470</td>
</tr>
<tr>
<td>State Agencies</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Local Governments</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Vendors</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

Unquantified Costs
- Costs to SITPO and State and local governments from training related to new process and shifts in workload.
- Minimal costs to vendors from providing ITS with copies of hearing documents sent to OAH.
| Total Costs | $13,333 | $13,560 | $14,025 | $14,752 | $15,781 | $17,169 | $18,997 | $21,376 | $24,462 | $28,470 |
| 10-year NPV of Costs | $121,750 |

Benefits
| Benefits | Statewide IT Procurement Office (SITPO) | $31,146 | $31,675 | $32,214 | $32,761 | $33,318 | $35,223 | $35,822 | $36,431 | $37,050 | $37,680 |
| State Agencies | $873,529 | $888,379 | $903,482 | $918,841 | $934,461 | $950,347 | $966,503 | $982,934 | $999,644 | $1,016,637 |
| Local Governments | $97,059 | $98,709 | $100,387 | $102,093 | $103,829 | $105,594 | $107,389 | $109,215 | $111,072 | $112,960 |
| Vendors | $2,602,755 | $2,647,002 | $2,692,001 | $2,737,765 | $2,784,307 | $2,831,640 | $2,879,778 | $2,928,734 | $2,978,523 | $3,029,157 |

Unquantified benefits
- State and Local: benefits from improved bids as a result of debriefings,
- net benefits from change in "small purchase" (direct advertising),
- net benefits from electronic workflow

| 10-year NPV of Benefits | $27,092,891 |

Net Benefits
| 10-year NPV of Net Benefits | $26,971,141 |

Notes:
- The above estimates assume a constant annual inflation of 1.7%, based on the average IHS Global Insight GDP Deflator 10-year baseline forecast.
- The net present values (NPV) are computed using the statutorily mandated discount rate of 7% and are in terms of 2012 dollars.
Proposed Amendments, Projected Costs and Savings, and Uncertainties

The proposed amendments to the rules are outlined in summary form below. Projected costs and savings are included in tabular form for each rule summary item. As some of the projected costs and savings are estimated, a sensitivity analysis with a range above and below each itemized cost or savings has also been included in each table.

The analysis below provides information on the estimated costs and benefits only as they relate to procurements that are above the agencies’ delegated authority of $25,000 and that involve the Statewide IT Procurement Office (SITPO) that is housed within ITS. On average, there are about 850 procurements per year that go through SITPO. Local governments and the entities in the University System have the option to use the SITPO for procurement, but there is no requirement, so only 10% of the procurements are for local governments and 20% for universities and community colleges. Other State agencies, including ITS account for 70% of the 850 procurements. SITPO does not keep track of procurements below agencies’ delegated authority, nor is there a statewide system that does. Therefore, the analysis below does not take into account impacts of the rule change that affect State agencies, universities, or local governments directly.

The costs State agencies would face may be understated since the time it will take agencies to acclimate with the new IT procurement process is not factored into the analysis below. Also, for the purposes of this fiscal note, a constant number of bids and vendors requiring debriefings or filing protests are assumed. This assumption is reasonable given the lack of significant fluctuations in procurement and bids.

1. Allow bidder debriefings at the agency’s discretion, per the solicitation terms.

Currently, the rules do not allow or disallow debriefing of bidding vendors. Vendors do seek procurement debriefings from NC state agencies but the requests are routinely denied because debriefings are not expressly authorized. Debriefings are permitted in certain federal procurements as well as in other state procurements. The proposed amendment prescribes that debriefings may be pre- or post- award. The basis for the proposed amendment is that, while debriefings are not a substitute for the protest process, such exchanges of information and discussion between rejected vendors and the State purchasing staff regarding the evaluation may assuage a protest of award or assist in the correction of errors. Under the proposed rules, the vendors would have to request a debriefing.

Benefits

In general, the exchange in information between vendors and the SITPO will result in:

- Clearer, more specific future State solicitations, including more precise:
  - Specifications and instructions to vendors, and
  - Evaluation criteria and description of the process;
- A reduced number of protests that would have occurred because it was the only available mechanism to for vendors to obtain feedback on a rejected bid;
- Stronger, more experienced future vendor offer-responses to State solicitations;
- Enhanced communications and relationships with competing vendors, as well as with awarded contractor during contract implementation; and
- A reduced likelihood of protest to award recommendation or correct errors from discussions regarding individual, rejected bidder’s offer and respective, applicable evaluation criteria.

Benefits from pre-award debriefings in particular include:

- By notifying vendors that they have been “rejected” from consideration in an initial phase of review, it allows vendors to move forward with other business, knowing they are not obligated to the State (which may be a highly significant benefit to vendors competing in certain solicitations with protracted evaluations during which vendor resources are being reserved in case they are awarded the contract.)
- Allows errors to be addressed before the contract has been awarded.
Quantitative Analysis: Savings

**Table 2. Savings from More Debriefings Allowed**

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Methodology and Assumptions</th>
<th>Annual Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Savings to vendors who are not in top tier of bids from having pre-award debriefings and being able to move forward faster with other business</td>
<td>Based on current requests for debriefings and the current number of protests per year (on average 8 protests), this analysis assumes 10 vendors would request pre-award debriefings each year. Also, given staff’s knowledge of the process and best professional judgment, the analysis assumes that the human resource assets held in reserve for bid by each vendor are only utilized 50% of what is optimum. A vendor generally dedicates 3 Full Time Equivalences (FTEs) making an average $95K a year for 2 months to the bidding process.</td>
<td>$237,500</td>
</tr>
</tbody>
</table>
| **Sensitivity Analysis**                                             | 1. Assumes assets held in reserve for bid are only utilized 25% of what is optimum.  
25% = $118,750                                                                 |                |
|                                                                      | 2. Assumes assets held in reserve for bid are only utilized 75% of what is optimum.  
75% = $356,250                                                                 |                |
| b. Savings in terms of the value of time and effort dedicated to making the bid when pre-award debriefings identify a mistake that can be corrected | The analysis, assumes a mistake that can be corrected occurs 1% of the time and it is caught in the debriefing and allows the vendor to continue in the bid selection process. The value the vendor places on having the opportunity to still be in the running is at least equal to the time and effort they put into making the bid. Again, 10 vendors are expected to request debriefings each year. Based on staff knowledge and interaction with vendors, it is estimated that each vendor would dedicate about 2 staff members, compensated at about $80,000/year, to put together the bid. The average amount of time staff spends on the Request for Proposal (RFP) posting is 15 days. An additional 5 days to correct the mistake caught in the debriefing would be added to the length of the RFP posting, so the estimate reflects 20 days of work spent by the vendor’s staff on preparing the bid. | $1,333         |
| **Sensitivity Analysis**                                             | 1. Assumes mistakes occur 2% of the time and it is caught in the debriefing.  
2% = $2,667                                                                 |                |
|                                                                      | 2. Assumes mistakes occur 3% of the time and it is caught in the debriefing.  
3% = $4,000                                                                 |                |
| c. Post-award debriefings improve future bidding with the State       | Unknown. Given all the variables involved and the uncertainties, it is impossible to provide any meaningful estimate to portray the benefits vendors would experience from future bids as a result of gaining a better understanding in the debriefings of the State’s bid selection process. |                |
| State                                                                | Methodology                                                                                                                                                                                                             | Annual Savings |
| a. Savings to SITPO from reduced number of protests                  | Under the current rules, about 50% of 8 protests per year occur because vendor actually wants a debriefing but cannot obtain one. Based on staff’s best judgment, this analysis assumes that of those protests, only half would be eliminated as a result of allowing briefings (essentially, there would be 2 less protests a year). State staff working on protests are compensated on average about $120,000 a year. It currently takes staff 1.5 hours to deal with a protest. | $1,500         |
Quantitative Analysis: Costs

Table 3. Costs from Debriefings

<table>
<thead>
<tr>
<th>SITPO</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Additional time spent</td>
<td>The expected 10 debriefings</td>
<td>$3,333/ year</td>
</tr>
<tr>
<td>on debriefings</td>
<td>per year would require SITPO</td>
<td></td>
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<tr>
<td></td>
<td>staff to spend an estimated</td>
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<tr>
<td></td>
<td>one additional day on</td>
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<tr>
<td></td>
<td>preparing and conducting</td>
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<tr>
<td></td>
<td>each debriefing. The staff</td>
<td></td>
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<tr>
<td></td>
<td>who would be engaged in the</td>
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<tr>
<td></td>
<td>debriefings are</td>
<td></td>
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<tr>
<td></td>
<td>compensated an average of</td>
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<tr>
<td></td>
<td>$80,000 per year.</td>
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<tr>
<td></td>
<td>Subtotal for Vendor and</td>
<td></td>
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<tr>
<td></td>
<td>State Benefits from</td>
<td></td>
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<tr>
<td></td>
<td>Debriefings</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. Sensitivity Analysis</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subtotal = $122,167</td>
<td></td>
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<tr>
<td></td>
<td>2. Sensitivity Analysis</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subtotal = $362,500</td>
<td></td>
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<tr>
<td>1. Assume 25% of these</td>
<td></td>
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<tr>
<td>are eliminated.</td>
<td>25% = $750</td>
<td></td>
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<tr>
<td>2. Assume 75% of these</td>
<td></td>
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<tr>
<td>are eliminated.</td>
<td>75% = $2,250</td>
<td></td>
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</tbody>
</table>

Note that the analysis above does not assume any additional costs to vendors from preparing for and having the debriefings or savings to vendors from not having to go through with a protest. Under the current rule, those vendors who would like to find out more information about why their bid was rejected have no choice but to start a protest. Generally, once they find out the reason for the rejection, they withdraw the protest. As a result, for the purposes of this analysis, the agency assumes that these vendors are unlikely to expend much time and resources on the protest, so the cost difference between a protest and a debriefing would be minimal, if any, for these vendors.

SITPO, on the other hand, cannot make any assumptions about the intentions of the protester and have to legally prepare for the protest. Thus, this analysis assumes that SITPO would incur some savings from reduced number of protests, as well as additional costs from preparing for debriefings.

Risk
The above estimated impacts do not account for some uncertain situations that may lead to additional costs or savings:

- Miscommunications during debriefings may complicate or even facilitate award protests, which could lead to additional costs or lower savings than estimated above.
- Competing vendors may make incorrect statements to the media, concerns from which may need to be addressed by the State creating an additional time cost.
- Given that the proposed rule change would allow pre-award debriefings, there may be a need to revise Public Records Policies, which could tax staff time.
- The above analysis does not include any costs related to bidders which are ultimately rejected but are evaluated as within the “competitive range,” in that they would not have the same time to prepare a possible Protest as those bidders notified of their “rejected” status prior to presentations, etc.
2. Change definition of “small purchases” to include all IT purchase transactions within an agency’s general delegated authority of $25,000.

The proposed changes would result in eliminating requirements within an agency’s delegated authority for:
- Advertisement through the State’s website;
- Time-open for solicitation of 10-days; and
- Receipt of “sealed offers” from vendors.

Under an agency’s general delegation, the rules require a purchasing agency to advertise purchase transactions for no less than 10-calendar days only on the State’s IPS (Inter-active Purchasing System) website, as well as to only accept “sealed” (printed) offers when the purchase is above $10,000. The proposed amendment would result in elimination of these requirements. Changes would still require State-approved solicitation advertising processes but would provide more flexibility. Specifically, it would allow use of the E-Procurement’s E-Quote feature. Requirements remain the same for purchase transactions above the general delegation.

Benefits
- An agency must already establish procedures for making all of its small dollar (below $10,000) purchases. These amendments would allow it to develop consistent processes and practices within its delegated authority, thereby creating some efficiency savings.
- Procurement documents and records could be managed electronically, with more security and transparency.
- Change to advertising and publishing requirements (i.e., days-open) will allow an agency to:
  - Significantly expedite the agency’s small dollar purchase processes for both staff and vendors;
  - Promote more consistency in agency processes with staff as well as vendors;
  - Make use of IPS for advertising purposes, instead of using print media, which will decrease agency staff spent on advertising activities; and
  - More specifically target specialized vendors to enable more competitive response-offers via specialized publications or websites.
- Electronic submissions would:
  - Allow vendors to more quickly and easily respond to agency solicitations which may result in greater competition and savings, and
  - Save vendors time and cost for shipping or personal delivery on lower dollar purchases, which may result in even more competitive offers and savings to the State.

Costs
- There may be a one-time cost for agencies to develop more consistent processes and practices to act within its delegated authority, and to train staff on the new procedures. This cost is likely to vary by agency, and is difficult for ITS for quantify,

Quantitative Analysis

<table>
<thead>
<tr>
<th>State Agencies</th>
<th>Methodology</th>
</tr>
</thead>
<tbody>
<tr>
<td>More direct advertising</td>
<td>Unknown. ITS expects agencies to have a net benefit from this rule change related to efficiency gains from having all procurements under the agencies’ authority handled in a more expedited manner, as well as being able to attract more competitive offers. Moreover, using IPS for advertising versus print media is expected to result in some savings for the agencies. Given all the uncertainties and lack of data, it is difficult for ITS to provide any reasonable estimate of what this efficiency savings might be.</td>
</tr>
</tbody>
</table>

Risk
If agencies fail to develop proper procedures as required, this rule change could lead to less effective competition, and an increase in State spending on procurement contracts.
3. Require agencies to allow electronic submission and receipt of vendor-offers to the State, per terms of the individual solicitation.

Currently, the rules emphatically disallow State acceptance of electronic, facsimile, and telephone offers that are required to be “sealed” in response to solicitations. The proposed amendment requires purchasing agencies to allow electronic vendor-offers and submissions with specific format constraints to be determined according to the terms of the individual solicitation document. The change allows SITPO and the purchasing agencies to take advantage of large-scale document and records management technology, such as future creation of web-based submissions, automated postings and notifications, electronic drop-boxes, etc.

Benefits
- All procurement documents would have the potential be managed electronically, including retrieval and archiving, and even digital signatures by vendors.
- This could allow for greater vendor access, ability to search for specific information, and ability to track status of bids offered in response to solicitations.
- The change could also allow for greater security regarding dissemination of confidential information.
- This would allow for greater consistency, and increased transparency, in the procurement process.
- Solicitation and award information could be disseminated more quickly, expediting the procurement process for both State staff and vendors.
- Ultimately, the change could reduce State costs associated with administration of its procurement processes, including costs related to storing procurement documents.

Quantitative Analysis: Savings

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Methodology</th>
<th>Annual Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Elimination of delivery costs of paper copies sent to the State</td>
<td>The average number of bids received by SITPO per year is about 2,000. About 5 copies of bid documents are required per bid, averaging about 40 pages per copy. Depending on the method of delivery, it costs vendors up to $1 per page to send all the copies to the state.</td>
<td>$400,000</td>
</tr>
<tr>
<td>b. Elimination of printing costs</td>
<td>It currently costs vendors about 10 cents per page for printing and copying all the documents that they are currently required to mail in.</td>
<td>$40,000</td>
</tr>
<tr>
<td>c. Reduced number of bids that fail to make it in time</td>
<td>These calculations estimate that two thirds of vendors who currently fail to mail in their bid on time will meet the deadline under the proposed rules due to the allowance of electronic submission, thus providing some benefit to the time the vendor spent on preparing the bid. On average, about 3 bids are rejected per year due to late submission, so this analysis assumes 2 bids will be entered on time under the proposed rules. The calculation is based also on the assumptions that it takes 2 vendor staff 15 days to prepare a bid, and that staff is compensated at about $80,000 per year.</td>
<td>$20,000</td>
</tr>
<tr>
<td>d. Additional time to prepare</td>
<td>Based on staff knowledge of the vendors’ bid preparation process,</td>
<td>$933,333</td>
</tr>
</tbody>
</table>

<p>| Sensitivity Analysis                       | 1. Assume all (3) bids will make the deadline under the new rules |
|                                          | 100% = $30,000                                                    |
|                                          | 2. Assume only 1 of the 3 bids would make the deadline             |
|                                          | .33% = $10,000                                                    |
|                                           | d. Additional time to prepare                                     |
|                                           | Based on staff knowledge of the vendors’ bid preparation process,  |
|                                           | $933,333                                                         |</p>
<table>
<thead>
<tr>
<th>bids due to less time spent on printing and delivery</th>
<th>the analysis assumes that 35% vendors (ITS received 2,000 bids per year) would have two extra days available to prepare the bid because of less production and delivery time required. The assumption that it takes two vendor staff to prepare the bid and they are compensated at $80,000 a year still holds.</th>
</tr>
</thead>
</table>
| **Sensitivity Analysis** | 1. Assume two extra days available to prepare bids because less production and delivery time required and assume 25% of vendors would make use of the extra days  
25% = $666,667 |
| **SITPO Methodology** | Annual Savings |
| a. Savings from no longer needing to package and mail documents to state agencies involved in the procurement | Actual |
| | $1,000 |
| b. Time savings from using electronic workflow instead of spending time on storing documents and mailing documents to agencies involved in the process | Based on staff’s best judgment, the analysis assumes that SITPO would save about 30 minutes per bid due to having an electronic workflow. On average there are 2,000 bids per year, and state personnel used to process the bids are compensated at $55,000 per year. |
| | $28,646 |
| c. Storage savings from gradually reducing the amount of procurement paperwork SITPO needs to keep on file due to the Public Records Retention Policy | Currently, SITPO rents at a rate of $80/month an offsite facility to store old procurement documents for at least 5 years from the end of the procurement process. In addition, SITPO uses a 10x12 file room on its premises, which could be otherwise used for office space. Based on the building value of $10.25 per square foot, the opportunity cost of using the room for filing is $1,230 per year. |
| | $1,230 (starting in year 6) |
| **Sensitivity Analysis** | 1. Assume SITPO would stop needing to store files offsite in 5 years, but would still store onsite in the 10x12 room.  
= $960 |
| **Sensitivity Analysis** | 2. Assume that SITPO would be able in 5 years to move to electronic storage and would no longer require to rent offsite space, in additional to converting the onsite filing room to an office.  
= $2,190 |
| Subtotal | $1,422,979 |

**Quantitative Analysis: Costs**

<table>
<thead>
<tr>
<th>Table 6. Costs for Electronic Delivery of Bid</th>
<th>Annual Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>SITPO</td>
<td></td>
</tr>
</tbody>
</table>

8
SITPO would have to purchase a government wide electronic “drop box” subscription necessary for vendors to be able to submit large documents related to bids and for state agencies to be able to have access to that information

<table>
<thead>
<tr>
<th></th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$10,000</td>
</tr>
</tbody>
</table>

Risk
The analysis does not take into account possible increases costs in equipment and software that state agencies would incur as a result of an electronic workflow, including costs related to storage of electronic files. As technology advances, this cost gradually would decrease and it would also be mitigated in part by the savings the State would gradually incur from needing less physical storage space for all procurement related documentation. Neither of these factors is included in the estimate above. Also, as a result of receiving electronic bids, state agencies might be compelled to print more documents (currently, they receive documents in print format), which could increase the State’s printing costs. However, given the amount of documentation related to procurement, most agency staff generally prefers having information in electronic format, so it is unlikely that the cost of extra printing would be significant.

4. **Allow negotiations, per terms of individual solicitation, on all large IT-goods purchases (i.e., purchases above the agency’s delegation of $25,000, requiring SITPO review and authorization before soliciting offers).**

Currently, the rules allow the option for negotiation only via one bid selection method. Negotiations (or any change in pricing, such as errors or competitive, best-and-final-offers) can only be used if the solicitation cites the trade-off/ranking source selection method. The recommended change allows negotiation or price-changes per the terms of the solicitation on large IT goods purchases. This would allow the purchasing agency and SITPO to determine, on each individual procurement, whether negotiation is an appropriate term to include. Because the current rules often disallow negotiations, the State is often prevented from obtaining the most cost effective or efficient award for IT goods, when the very nature of the agreement or purchase sometimes requires negotiations to State terms and conditions, such as Master Agreements or Limited Competition or Sole-Source awards. Also, when using the lowest-quoting competitive selection method, rules preclude making a true best-value award on large IT goods purchases. Even if price should remain the primary evaluation factor, due to the quickly changing and complex nature of IT goods (e.g., versions of operations software; load demands; delivery; installation; warranties; maintenance/support; etc.) - clarifications can and do affect price. Yet, because negotiation is precluded, the State cannot accept any change in price and consider its true, total cost of ownership or any value-added in comparing one competing vendor to another. Rebids often occur as a result.

Benefits
The opportunity to clarify or negotiate terms regarding complex pricing, errors, terms, added value from an offeror, etc., will allow:

- The State to fully consider the true total cost of ownership and will result in more competitive pricing;
- More complete solutions to be selected; and
- Reduce the need to rebid to take advantage of new information, saving time and resources.

**Quantitative Analysis: Savings**

<table>
<thead>
<tr>
<th>Vendor and State &amp; Local</th>
<th>Methodology</th>
<th>Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 7. More Negotiations Allowed</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
More negotiations mean more complete information and better decision making

Assumes this increases the net value of procurement to both parties by 2% for those procurements that have a demand for more negotiation. Currently, there are about 850 procurement processes that go through SITPO each year, with a total reward value of about $550M. Of those, on average 150 (18%) would benefit from negotiations but the rules prohibit it. The assumption is that half this benefit would be incurred by vendors and the other half by state and local entities (split by the amount of procurement they do through SITPO).

### Sensitivity Analysis

<table>
<thead>
<tr>
<th>1. Assumes this increases the net value of procurement to both parties by 1% for those procurements that have a demand for more negotiation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1% = $970,588</td>
</tr>
<tr>
<td>2. Assumes this increases the net value of procurement to both parties by 3% for those procurements that have a demand for more negotiation.</td>
</tr>
<tr>
<td>$3% = 2,911,765</td>
</tr>
</tbody>
</table>

Subtotal $1,941,176

1. Sensitivity Analysis Subtotal = $970,588
2. Sensitivity Analysis Subtotal = $2,911,765

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**Risk**

The proposed rule amendments would require more depth of understanding and skill from Agency and SITPO staff, in recommending whether to utilize and then implement this available term in a given solicitation – this could lead to additional costs in terms of state employee time, which are not captured in the analysis above. Given that the change allowing more negotiations affects only a small subset of procurements (for commodities with fluctuating price and specifications, e.g. desktops), it is unlikely that SITPO or other state agencies would need to hire additional staff who are more experienced in negotiations.

5. **Define outcomes ITS may find when a bidder’s protest is determined to be valid or successful.**

Currently, the rules do not specify the outcome if a protest is determined to be valid. The ambiguity confuses a vendor who presumes that if the protest is determined to be valid, then it will be awarded the resulting business. However, often, awarding to the next highest ranking or lowest-quoting bidder is often the most appropriate result.

Specifically, the proposed amendment specifies an offeror’s successful protest may result in:

- Rebidding of the solicitation;
- Cancellation of the procurement; or
- Award to the next highest-ranking or lowest-quoting/technically qualified offer.

**Benefits**

- Provides necessary clarification for both SITPO and the agency procurement staff as well as the vendors that submit protests resulting in enhanced communications.
- Limits SITPO staff time in analyzing and making determination.

No costs would be incurred as a result of this clarification.

6. **Combine processes for one-step and two-step bid openings, and allow option for only one agency procurement staff person to open electronic bid offers.**
Currently, the rules list separate processes for one-step and two-step solicitations and different selection methods. The rules also require one State employee to open vendor-offers and one to witness the opening, when a solicitation specifies a two-step bidding process.

- A one-step bid is when technical and price offers are combined and opened together - and this information is made publicly available;
- A two-step bid is when technical responses and price-offers are submitted separately - and only those passing the technical evaluation are invited to separately submit price offers, with the price information publicly available only after award.

The proposed amendment would eliminate the separate processes, and make only one process required for bid openings - have vendor-price-offer information available after award regardless of selection method, as well as to only have one staff person “open” electronic offers, regardless of the evaluation process or selection method.

Benefits
- Promote more consistency in communicating and implementing agency procurement processes.
- Specifically, this change will simplify and expedite the process for bid openings as well as the process for identifying information available under the Public Records Act.

Costs
Aside from some staff training, there are no expected costs from this proposed change.

Combining the one-step and two-step bid openings and allowing one staff member to open electronic bids was necessary to fully take advantage of the proposed rule change that allows electronic delivery of bids. Any impact from this combination is captured in the benefits from having an electronic workflow estimated above.

7. Allow Purchasing Agency to always issue solicitations and receive bids, and issue awards for its respective procurements for solicitations above the purchasing agency’s delegation and after obtaining SITPO review and approval.

Currently, the rules require that:
- For Goods: SITPO, not the purchasing agency, issues solicitations, receives competitive offers/bids in response to the solicitations, and issues awards, above an Agency’s delegated authority;
- For Services: The purchasing agency issues solicitations to provide services or goods with services, receive competitive offers submitted in response to the bids, and issues its own awards, for bids above its delegated authority - after obtaining SITPO review and authorization.

The proposed amendment is to make the process for issuing solicitations, receiving offers, and issuing awards the same and adopt the services process for both goods and services.

Benefits
The change would promote more consistency in communicating and implementing agency procurement processes, as well as save agencies and SITPO staff time from mailing and delivering received bids, posting notification of awards, etc.

Cost
Note that this rule change would result in a transfer of workload from SITPO to other agencies. However, while agencies might see an increase in their workload, this would be likely offset by the time saved from having to interact with SITPO. The time it takes an agency to work through a procurement process varies widely based on agency staff and level of expertise. Some agencies have entire procurement divisions while other agencies only have one person who may not be a full-time procurement officer. Therefore, it is very difficult to quantify an increase or decrease in workload for individual agencies.
8. Define Master Agreements.

Current Rules are vague and do not provide any detail about what is a “master” agreement. The change would clarify the difference between an “agreement” and a “contract” and would identify the purpose and application of “master” agreements. Master agreements set an enterprise level framework for subsidiary agreements and include agreements such as Enterprise Licensing Agreements (ELAs).

Benefits
It is important that “agreement” and “contract” are well-defined and that the purpose and application of master agreements is clearly explained so that both parties (State agency and vendor) understand the commitments being made in a given procurement process.

Cost
This change is just a clarification and is not expected to create any costs.


Currently, the Rules do not include any reference to the use of the US Government Services Administration schedule, though this is required to be allowed by statute. The proposed amendment incorporates the use of this mechanism for selecting bidder lists, as appropriate.

Benefits
Required by statute and may provide a more convenient route to purchasing for certain products.

Cost
This change is just a clarification and is not expected to create any additional costs.

10. Clean-up statutory citations and improve clarity.

The statutory citations have been updated to reflect current statutes. Many of the rules have been amended to provide more detailed and clear explanations of the steps in the procurement process.

Benefits
As these rules provide guidelines for both State agencies and vendors who participate in the procurement process, these amendments will ensure that all participants have access to clear and current procurement procedures and statutory references.

Alternatives
ITS considered two alternatives to the proposed rule changes. First, ITS considered not changing its procurement rules at all. The rule changes will have some cost and any changes would require an education process. However, the benefits of the changes far outweigh the costs.

Another alternative considered was a far more aggressive rewrite of the procurement rules and adopting the state government model procurement code as recommended by the National Association of State Procurement Officials (NASPO). The NASPO model takes a lot of the government procurement best practices from the Federal Acquisition Regulations (FAR) and writes them to fit in a state government environment. Many of the proposed rule changes have similarities to the suggested rules in the model. However, the model has many more changes as well. Adopting the model entirely would have taken far more analysis time because it does not consider the statutory authority of a given state. Unique statutory requirements in North Carolina would require us to significantly rethink our procurement rule structure. One of the structural difficulties is that the Department of Administration also has a statewide procurement office and its own set of procurement rules. So, every state
agency has to deal with two statewide procurement offices. The procurement rule structure of both sets is similar. If we adopted a wholly different structure it could cause mass confusion among the agencies and many more procurement process errors. As a result, the second alternative was not adopted either.
This Chapter was transferred and recodified from 4 NCAC 21 effective September 1, 2000. [S.L. 2000-174]

09 NCAC 06A .0101 is proposed for amendment as follows:

09 NCAC 06A .0101  FORMS, TERMS AND CONDITIONS
The Office of Information Technology Services (ITS) shall prescribe forms, terms and conditions and advertisement requirements for acquiring goods and services related to information technology for agencies. The forms, terms and conditions, and advertisement requirements shall be established taking into consideration market volatility, trends and conditions, legal requirements, and any other factors determined to be in the state’s best interest. These shall be made available to all agencies via the State’s designated IT procurement website.

History Note:  Authority G.S. 147-33.76(b)(1); 147-33.82; 147-33.95(f); 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
For the purpose of this Chapter,

1. **Agency**/Agencies is defined as an entity enumerated in G.S. 143B-3(1), G.S. 147-33.81(6).

2. **Best value procurement** Value Procurement is defined as a procurement process that has as a with the fundamental objective of the reduction of reducing the total cost of ownership. The particular procurement methods used are selected so as to result in the best buy 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, determined to represent best value.

3. Clarification is defined as limited exchanges communication between the state and an offeror that may occur after receipt of offer when negotiation is not contemplated, for the purpose of eliminating irregularities, informalities, 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. Offerors may be given the opportunity to resolve minor clerical errors. No change in price offer is permitted. Clarification shall not be used to cure material deficiencies or to negotiate.

4. Communications are exchanges between the state and offerors after receipt of offers to address issues of past performance, to enhance the state’s understanding of offers, to allow reasonable interpretation of the offer, or to facilitate the state’s evaluation process. Communications shall not be used to cure deficiencies or material omissions in the offer or to alter technical or cost elements of the offer.

5. **Commodity** is defined as tangible or moveable goods, equipment, materials or supplies.

6. 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. The public competitive process is the process followed by a public agency to solicit offers from multiple suppliers to provide the specified goods or services. The process must be conducted in a manner that attempts to ensure that all qualified suppliers who are willing to submit offers are treated equitably and are not placed at a disadvantage with respect to the process outcome.

7. Competitive Range is defined as the range of all of the most highly ranked offers, as established in the solicitation, and as determined by the evaluation committee. The range shall be used to determine the optimal best value solutions to address requirements of the solicitation document.

8. Deficiency is 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.

9. 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.

10. General Delegation is defined as the authority delegated to the purchasing agency for the procurement of IT goods and services.
(8) (10) Goods are defined as any information technology commodities including equipment, materials, or supplies.

(9) (11) Negotiation is defined as exchanges oral or written communications in either a waived, limited, or open competitive procurement or sole source environment between the state and offerors that are 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 also give evaluation credit for technical solutions exceeding mandatory minimums or negotiate with offerors for increased performance beyond mandatory minimums.

(10) (12) Offer is defined as a bid or proposal submitted in response to any solicitation document utilizing "Best Value" procurement methodology including Invitation for Bids (IFB), Request for Proposals (RFP), Request for Quotations (RFQ), negotiation, or other acquisition processes, as well as responses to Solution-Based Solicitations and Government-Vendor Partnerships.

(11) (13) Packaged software, or Commercial off the shelf Software (COTS) as used in 09 NCAC 06B .1301, is an information technology commodity and is defined as software used regularly for other than government purposes and is sold, licensed, or leased in significant quantities to the general public or commercial enterprises at a vendor’s catalog prices.

(12) (14) Pressing need is defined as a need arising from unforeseen causes including, delay by contractors, 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.

(13) (15) Price is defined as the amount paid by the state to a vendor for a good or service.

(14) (16) Procurement is defined as acquisition the process of acquiring goods and or services.

(15) (17) Progressive Award is defined as an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total quantity procured. A progressive award may be in the purchasing agency’s best interest when the awards to more than one offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(16) (18) Purchasing Agency, or purchaser, is defined as the agency that issues the purchase order and thereby awards a contract.

(17) (19) Responsible Offeror means an offeror who demonstrates in its offer that it has the capability to perform fully the requirements of the solicitation in good faith.

(18) (20) Responsive Offer means an offer that conforms substantially in all material respects to the solicitation.

(19) (21) Sealed Offer is defined as an offer that remains unopened until the public opening time stated in the solicitation. Offers are typically submitted sealed to meet this requirement, but electronic submission is permitted if the purchasing agency has the capability to maintain the confidentiality of the offer until the scheduled public opening time.

(20) (22) Services Service is defined as any process of providing services work performed to meet any demand or need for information technology requiring specialized knowledge, experience, expertise, professional
qualifications, or similar capabilities for any aspect of information technology, including, but not limited to, work or task performance, review, analysis, performance; review; analysis; development; integration; installation; or advice in formulating or implementing improvements in programs or services.

(23) Small Purchase is defined as the purchase of goods and services where the expenditure of public funds is within the purchasing agency’s delegated authority.

(14) Solicitation document is defined as a written or electronic IFB, RFQ, RFP, Solution-Based Solicitation, Government-Vendor Partnership, Request for Information, Invitation for Bid (IFB), Request for Quote (RFQ), Request for Proposal (RFP), or Request for Information (RFI) document or other acquisition ITS approved documents expressly used to solicit, invite offers, or to request information regarding the acquisition of goods and services.

(25) State Chief Information Officer (State CIO) is the person appointed by the Governor, and as used herein shall include the State CIO or the State CIO’s designee.

(26) State CIO approval, limitation or determination, as used herein, is the judgment applied to the particular factual basis for the procurement decision under the rule or rules, utilizing the knowledge and qualifications of the Office, the needs of the State, and information provided by the agencies involved.

(27) Tabulation is defined as a list of offeror(s) submitting offer(s) in response to a particular solicitation.

(28) Total Cost of Ownership is defined as a summation of all purchase, operating, and related costs for the projected lifetime of a product, good, or a service. It includes, but is not limited to, purchase price, transportation, receiving and inspection, maintenance, operating costs, downtime, energy costs, and disposal costs.

(29) Weakness is defined as a flaw in the offer that increases the risk of unsuccessful contract performance.

History Note: Authority G.S. 143-135.9; 147-33.82; 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06A.0103 is proposed for amendment as follows:

**09 NCAC 06A.0103 BENCHMARK AND THE BOARD OF AWARDS**

(a) The Chief State Information Officer (CIO) shall establish a benchmark of one hundred thousand dollars ($100,000) (benchmark).

(b) When the dollar value of a contract for the purchase, lease, or lease/purchase of IT goods exceeds the benchmark, the Board of Awards (BOA or Board) shall review the ITS recommended action for the purchase transaction.

(c) ITS shall also report to the Board emergency purchases over the established benchmark.

(d) ITS shall submit the Board’s recommendation (award, cancellation, approval, negotiation, etc.) to the State CIO. The State CIO may do one of the following:

1. concur with the recommendation of the board by awarding contracts or approving other recommended action; or
2. take other action as the State CIO deems necessary.

(e) The State CIO may elect to proceed with award of a contract without recommended approval by the Board in cases of emergency or in the event that the Board is not available for canvassing.

(f) Review by the Board and approval by the State CIO is exempted for the following purchase transactions: exemption by statute, rule or special delegation; where one purchasing agency is buying from another agency; or purchasing agency is in the Department of Administration; or buying through state surplus property or federal surplus property.

**History Note:** Authority G.S. 147-33.76(b)(1); 147-33.301(a); 447-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

SUBCHAPTER 06B – PROCUREMENT REQUESTS
SECTION .0100 - REQUISITIONING

09 NCAC 06B .0101 is proposed for amendment as follows:

09 NCAC 06B .0101 PROCEDURE
Agencies The purchasing agency shall request authorization for procurement action exceeding its delegated authority from ITS by means of electronic or written requests, except in cases where a purchase is allowed by rule or other authority (e.g., emergency situations).

History Note: Authority G.S. 147-33.76(b)(1); 147-33.95(b); 147-33.76(b1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0102 is proposed for amendment as follows:

09 NCAC 06B .0102 VERBAL REQUESTS

Verbal requests from a purchasing agency for authorization of procurement activities are not satisfactory substitutes for electronic or written requests except in emergencies. Action exceeding delegated authority may be accepted by ITS in emergency situations. Electronic or written confirmation from the purchasing agency must follow any such request made in an emergency situation.

History Note: Authority G.S. 147-33.76(b)(1); 147-33.95(b); 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .0103 is proposed for amendment as follows:

09 NCAC 06B .0103 CONFIDENTIALITY OF SOLICITATION DOCUMENTS

All information and documentation (verbal and written) relative to development of a contractual document for a proposed procurement 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 successful completion of the procurement process.

(a) In order to preserve fairness and encourage competitiveness, all information and documentation in whatever form, (e.g., electronic, written, and verbal forms) relative to the development of a solicitation for a proposed procurement shall be withheld from public inspection until award from that solicitation, unless the purchasing agency abandons or cancels the solicitation and indicates in its procurement records that it does not intend to rebid the solicitation or continue the procurement action.

(b) The purchasing agency may release such portions of the material as it deems necessary in order to develop a complete solicitation or to debrief certain vendors as provided in these Rules.

History Note: Authority G.S. 147-33.76(b)(1); 147-33.95(a); 147-33.103(b).
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
SECTION .0200 - SPECIFICATIONS

09 NCAC 06B .0201 is proposed for amendment as follows:

09 NCAC 06B .0201 TYPES OF DEVELOPMENT OF IT SOLICITATION DOCUMENTS AND SPECIFICATIONS

(a) There shall be two general one or more types of IT solicitation documents that include specifications, specifications established A standard specification shall be originated and developed by ITS or any other agency or commission, as statutorily authorized to develop standards.

(b) ITS will establish, develop, and maintain IT solicitation documents and specifications that are current and intended for general or repeated use and publish these forms on its website or other designated location available to the purchasing agency (also see .0302). It shall be comprehensive in nature, intended for repeated use and may be changed, as quickly and as often necessary, to address changes in the technology marketplace. An example of this type of specification is one that complies with the required statewide Technical Architecture as developed by the Information Resource Management Commission (IRMC) for statewide use.

(c) The other Other general type types of solicitation specification specifications that manage specific business needs shall may be originated by the user a the purchasing agency and either approved or modified as necessary by ITS to accomplish the overall efforts to manage the State’s area of information technology effectively. This type of specification may include, but is not limited to, “brand name or equal” or “brand specific” technical and functional specifications. A purchasing agency submitting other types of specifications or solicitations must demonstrate how such meets its respective business needs and whether other information technologies are commercially available to satisfy those needs.

History Note: Authority G.S.147-33.76(b)(1); 147-33.95(b); 147-33.103(b); Temporary Adoption Eff. January 1, 2000; E tf. August 1, 2000. Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0202 is proposed for amendment as follows:

09 NCAC 06B .0202 NEED
ITS may inquire into the need for and level of quality of goods or services requested by an agency, a purchasing agency in its solicitation document. After consultation with the agency, purchasing agency, ITS may authorize or modify the level of specification requested to enhance management overall direction of the state’s program in the area of State’s information technology, technology programs or services, or to comply with 09 NCAC 06B .0301, Procurement Procedures, or other rules.

History Note: Authority G.S. 147-33.76(b)(1); 2147-33.95(b); 147-33.76(b1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B.0203 is proposed for repeal:

09 NCAC 06B.0203 DEVELOPMENT OF SPECIFICATIONS

(a) A standard specification is intended for general use and kept current by ITS. In formulating such a specification, advisory committees made up of personnel from various agencies and the private sector may be employed for advice and assistance. This type of specification may be offered also for the review and comments of manufacturers and suppliers who may participate in the procurement process on the items in question.

(b) Where competition is available and advantageous to the state, every purchaser shall use/write specifications and requirements that are reasonable to satisfy the need, but not unduly restrictive, and that shall encourage competition in the open market and result in the best possible contract for the good or service needed.

History Note: Authority G.S. 147-33.95(b); 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Repealed Eff.
09 NCAC 06B .0204 is proposed for amendment:

**09 NCAC 06B .0204 ARTICLES FOR SPECIAL PURPOSES**

Where articles are to be used for (1) educational or training purposes, (2) by persons with disabilities, (3) for test and evaluation or research purposes, or (4) for any other special purpose deemed necessary by the CIO, consideration may be given to the factor of suitability of such articles in the preparation of procurement documents, including solicitation specifications, evaluation of offers, requests for limited or waiver of competition, and the final award of contracts. ITS shall consult with the purchasing agency prior to making modification by ITS of any information or recommendation submitted by the end user that agency.

**History Note:** Authority G.S. 147-33.76(b)(1); 147-33.95(b); 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0205 is proposed for repeal:

09 NCAC 06B .0205    SUBMISSION FOR ADOPTION
Upon completion of all studies, reviews, and drafts; any proposed standard specifications shall be submitted to the CIO or his designee for consideration. A specification shall be adopted as a standard if advantageous to the state. ITS may modify a standard specification on an interim basis as deemed necessary or advantageous to the state.

History Note:    Authority G.S. 147-33.95(b); 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Repealed Eff.
09 NCAC 06B is proposed for repeal:

**09 NCAC 06B .0206 COPIES OF SPECIFICATIONS**

ITS shall distribute copies of standard specifications to interested parties through electronic media and these shall be available for customer and public inspection at ITS and on the ITS IT procurement website.

**History Note:**—Authority G.S. 147-33.95(b); 147-33.103(b);

Temporary Adoption Eff. January 1, 2000;


Repealed Eff.
09 NCAC 06B.0207 is proposed for repeal:

**09 NCAC 06B.0207 CONFIDENTIALITY**

All information and documentation relative to the development of a specification/needs document shall be deemed confidential in nature until specification adoption or finalization of the procurement process for a specific contract.

*History Note:*

Authority G.S. 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Repealed Eff.
09 NCAC 06B .0301 is proposed for amendment as follows:

**09 NCAC 06B .0301 PROCUREMENT PROCEDURES**

(a) The procurement process of requesting or inviting an offer(s) shall be managed by the purchasing agency, including use of standard solicitation document language and terms and conditions established by ITS. If an emergency situation or pressing need exists, the procurement process requesting or inviting an offer(s) shall also be managed by the purchasing agency, including the standard terms and conditions issued by ITS, unless circumstances prohibit their use.

(b) All technology purchases involving the expenditure of public funds by agencies or ITS the purchasing agency shall be competed in conformity with the "Best Value" information technology procurement requirements in G.S. 143-135.9 and Rule .0308 .0302 of this Section. Exemptions may be granted by ITS the State CIO where a waiver, limited competition, waiver of competition, special delegation, exemption exemption, or an emergency purchase is permitted by rule. Information technology Purchasing agency procurements not covered by included in a statewide firm, convenience term, convenience, enterprise contract, or service contracts master agreement established issued by ITS shall comply with the following delegations applicable general delegations and procedures: procedures (06B .1304):

(1) **Small Purchases:** A small purchase is defined as the purchase of goods and services, where the expenditure of public funds is five thousand dollars ($5,000) or less. The executive officer agency head, of each agency or ITS, or his designee, shall set forth in writing purchasing procedures for making small purchases. The using agency or ITS shall award contracts for small purchases.

(A) The purchasing agency may advertise solicitations for offers to provide small purchases through the State’s designated IT procurement website(s) or by an alternate method of advertising, as may be approved by ITS.

(B) The purchasing agency shall award contracts for small purchases.

(2) **Purchases governed by General Delegation or statute:**

(a) For purchases made by an agency or ITS involving an expenditure of public funds over five thousand dollars ($5,000) or less up to the general delegation limit established by the CIO, the agencies or ITS shall use the following methodologies to encourage competition:

(i) The agency or ITS shall issue solicitation documents requesting or inviting offers;

(ii) The agency or ITS shall include in solicitation documents standard language, including terms and conditions as published by ITS on its IT procurement website. If additional terms and conditions are used, they shall not conflict with ITS’ standard terms and conditions unless prior written approval is obtained from ITS for unusual requirements; and

(iii) The agency may request distribution lists, if available from ITS, and use them in addition to distribution lists maintained by the agency for the purpose of soliciting competition.
(b) Agencies shall advertise their solicitations through ITS for purchases exceeding ten thousand dollars ($10,000) up to the general delegation established by the CIO. Agencies may advertise smaller dollar purchases through ITS.

(c) The agencies may award contracts under their general delegation.

(3) (A) Procurement Procedure: Where the total requirements for goods or and services involve an expenditure of public State funds that exceed the purchasing agency’s general or special delegation established by the State CIO, offers in conformity with G.S. 143-135.9 shall be solicited as follows:

(i) Competitive offers for goods, excluding services, shall be solicited by ITS via advertisement, unless the advertising requirement is waived by the CIO or his designee subject to the provisions of Rule .0314 of this Section. This shall include offers for statewide term or convenience contracts.

(ii) For service contracts exceeding twenty-five thousand dollars ($25,000), an agency or ITS shall solicit offers in accordance with the rules established for Sub-items (2)(a) and (2)(b) of this Rule. For agency solicitations, ITS shall engage in a review and approval process to ensure that proposed and actual acquisitions are advantageous to the state.

(iii) The purchasing agency shall include in solicitation documents standard language, including general or standard terms and conditions for technology purchases as published by ITS and in conformance with Rule .0316 of this Subchapter. If additional terms and conditions are used, they shall not conflict with ITS’ standard terms and conditions unless prior written approval is obtained from ITS; and

(iv) The purchasing Agency may also request from ITS known vendor sources amenable to competing for award of various State procurements.

(3) Agencies: The Purchasing agency shall submit drafts of acquisition solicitation documents to ITS for approval prior to proceeding with the acquisition procurement process. ITS shall then engage in a review and approval process of such solicitation documents to ensure that proposed and actual IT procurements are advantageous to the state.

(A) After completing the review and evaluation of offers received, the agency purchasing agency shall may prepare and submit to ITS for review a written draft recommendation for award, and if over the general delegation established by the CIO, shall submit a copy of all offers received and their award recommendation or other action to ITS for approval or other action deemed necessary by the CIO or his designee (Examples: cancellation, negotiation, etc.). ITS shall send a notice of the ITS decision to the agency. The agency shall then award contracts for services. The contract shall not be for more than three years including extensions and renewals, without the prior approval of the CIO or his designee based on a determination that it is advantageous to the state.
After completing review and evaluation of offers received, the purchasing agency shall submit to ITS a written, final recommendation for award, including a copy of all offers received and all supporting documentation with its recommendation.

ITS will then review and either approve the recommendation or direct modification to the recommended procurement action as deemed in the best interest of the State or as directed by the State CIO, (e.g., award, cancellation, rebid, negotiation with known sources of supply, etc.);

ITS shall notify the purchasing agency of the ITS decision regarding that recommended procurement action; and

Upon receipt of ITS notification, the purchasing agency shall proceed with the respective procurement action as directed. The purchasing agency shall not award contracts governed by general delegation or statute without receiving prior approval from ITS.

Notwithstanding any waiver, general delegation, or exemption rules; all telecommunications goods and services shall be procured by ITS. A contract term shall not be awarded for more than three years including extensions and renewals, without the prior approval of the State CIO, based on a determination that it is advantageous to the State.

History Note: Authority G.S. 143-135.9; 147-33.76(b)(1); 147-33.91; 147-33.95; 147-33.0101; 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .0302 is proposed for amendment as follows:

09 NCAC 06B .0302 METHODS OF SOURCE SELECTION

Competitive source selection may be conducted. Purchases governed by general delegation or statute shall be solicited, and offers evaluated in accordance with the following best value methods.

(1) The purchasing agency shall use the following steps to describe the process for application of the best value procurement methodology:

(a) Appropriate. The purchasing agency determines the appropriate best value bidding method through development of one of the solicitations set in subpart .0302(1)(b)(i)-(iii) of this Rule, as determined by purchasing authority.

(b) Solicitation document is developed and advertised in accordance with other rules of this Chapter. The following types of solicitations are available from ITS:

(i) Requests for Information (RFI), used for gathering information to prepare a solicitation for offers;

(ii) Invitations for Bid (IFB), used when the best value recommendation for award is based on the lowest priced or highest qualified and technically acceptable selection method;

(iii) Requests for Proposal (RFP), used for purchases when the State needs to solicit solutions-based offers, where negotiations with one or more vendors may be needed, or when the best value recommendation for award is based on ranking all offers and will not be based solely on the lowest priced-technically acceptable source;

(iv) One-Step solicitation, used when both the technical step one offer and price step two offer are submitted at the same time.

(v) Two-Step solicitation, used when the technical step one offer and price step two offer are submitted and evaluated separately.

(c) The purchasing agency shall develop, advertise, and publish its solicitation for offers in accordance with the Rules of this Subchapter.

(d) The purchasing agency shall hold any scheduled conferences or site visits in accordance with published solicitation requirements, terms.

(e) Offers are received. The purchasing agency shall receive offers in response to its solicitation and shall then conduct a public bid opening, and prepare a tabulation of all offers received. For solicitations that allow for negotiation after receipt of offers, only the names of responding bidders offerors are revealed, shall be disclosed at the public bid opening or on the tabulation of offers received. Price information shall be made public after evaluation and award.

(f) An evaluation committee or evaluation panel shall evaluate offers in accordance with the stated solicitation selection method and evaluation criteria, factors. For solicitations that include a best value ranking process, scoring and ranking may be determined by the purchasing agency. The purchasing agency shall rank offers by using any consistent rating or scoring methodology, including which may include adjectival, numerical, or ordinal rankings. Relative strengths, weaknesses, and risks supporting the evaluation shall document relative strengths, deficiencies, weaknesses, and risks supporting the
evaluation shall be documented in the contract file. Best-Value evaluation factors may include but are not limited to evaluating quality factors; factors, such as: delivery and implementation schedule; maximum facilitation of data exchange and systems integration; warranties, guarantees, and return policies; vendor financial stability; consistency of the proposed solution with the State’s strategic program direction; effectiveness of business solution and approach; industry and program experience; prior record of vendor performance; vendor expertise with similar projects; proven development methodologies and tools; and innovative use of technologies.

(i) State’s total cost of ownership, meaning summation of the State’s total cost for acquiring, operating, maintaining, and supporting a product or service over its projected lifetime, to include: competitive price data; evaluation of the offeror’s cost for actual and anticipated components comprising its quotation, as applicable; value-added conditions or additional services included in the offer;

(ii) Technical merit of the offer, including, as applicable, consideration for consistency and compatibility of the proposed solution with the State’s strategic program direction; maximum facilitation of data exchange or systems integration, effectiveness of business solution and approach to solicitation’s specific purpose or objective; delivery and implementation schedules; guarantees, warranties, and return policies; and

(iii) Probability of offeror performing the work as stated in the solicitation on time, in a manner that accomplishes the stated intent and business objectives, and that maintains compliance with industry standards including, as applicable, consideration of the offeror’s: financial stability; program or industry experience; past performance with the State; expertise with similar projects, solutions, or technologies; its proven development methodologies and tools, innovative use of technologies; key personnel and depth of additional resources, compared to scope and intent of business need stated in the solicitation; etc.

(f) (g) Clarifications, communications to establish a competitive range, or negotiations may be conducted. The purchasing agency may communicate with offerors after receipt of offers and in accordance with instructions and procedures set forth in the solicitation document and as well as those procedures appropriate to the designated method of source selection chosen. In those cases where negotiation is permitted by procedures set forth in the solicitation, the purchasing agency may also allow offerors may be allowed to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer.

(g) (h) The purchasing agency evaluation committee shall determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation document. All offerors shall be ranked from most advantageous to least advantageous to the State, and document such in its final award recommendation.
Award must be made to the responsive and responsible offeror whose offer is determined in writing to be the most advantageous and best value to the state, State, using all evaluation factors set forth in the solicitation (e.g., if the lowest price or highest qualified technically acceptable method is used, designated in the solicitation, then award must be made to the responding responsive and responsible offeror with the lowest price.

The following types of solicitations may be used:

(i) One-step Invitation for Bids (IFB) or Request for Proposals (RFP) B Technical and price response is submitted at the same time.

(A) If the lowest priced technically acceptable method of source selection is used, only clarifications are allowed.

(B) If the trade off or ranking method of source selection is used, communications to establish competitive ranges or negotiations may be used.

(ii) Two step IFB or RFP B Technical responses (step one) and price responses (step two) to solicitation are submitted separately.

(A) If the lowest priced technically acceptable method is used, technical responses (step one) are evaluated for acceptability only. Only clarifications with offerors are allowed. Price offers are opened (step two) for only those offerors who submitted technically acceptable responses. Selection is made by low price analysis.

(B) If the trade off or ranking method of source selection is used, technical responses (step one) are submitted, after which clarifications, communications to establish a competitive range, and negotiations with offerors may be allowed as specified in the solicitation document. Price responses (step two) are requested only from offerors placed in the competitive range after the technical evaluation and discussion phase has concluded. Subsequent negotiations may be conducted with offerors after receipt of price responses. Final price adjustments or best and final offers may be allowed.

A trade off method of source selection may be utilized when it is in the best interest of the state State to consider an award to other than the lowest priced offer or other than the highest technically qualified offeror. For a solicitation that designates using a trade-off trade-off source selection method, the following shall apply:

(a) All evaluation factors that will affect the contract award decision recommendation and their the relative importance of each shall be stated as evaluation criteria in the published solicitation.

(b) Price must be considered as an evaluation factor in the selection process. The solicitation shall state the importance or numerical weight of all evaluation factors criteria including price, consideration of price and total cost of ownership.

(c) Offers are shall be ranked according to the evaluation factors and their relative importance or weight as defined in the solicitation document criteria stated in the solicitation. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off.
against, other non-price factors. For example, an offer with the lowest price when compared to other offers would normally receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced.

(d) Clarifications are permitted.

(e) If specified permitted in the solicitation, solicitation terms, the purchasing agency may also use communications and negotiations negotiations, or other communications, may be permitted after receipt of an offer.

(3) The lowest price priced or highest qualified technically acceptable source selection method may be used when best value is expected to result from selection of the highest qualified or technically acceptable offer with the lowest evaluated price. When using the lowest price technically acceptable method, this method is designated in a solicitation, the following shall apply:

(a) The evaluation factors that establish the requirements of for technical acceptability shall be set forth in the solicitation. Solicitation’s evaluation criteria. Solicitations Evaluation criteria shall specify that the award will be made on the basis of the lowest evaluated price or most highly qualified of those proposals offers that meet or exceed the acceptability requirements for non-price factors.

(b) Trade offs Trade-offs between price and non-price factors are not permitted.

(c) Proposals are evaluated for acceptability but are not ranked using the non-price factors.

(d) Only clarifications Clarifications are permitted.

(e) Negotiations are permitted with this selection method for purchases over the purchasing agency’s general delegation, when so specified in the published solicitation. The purchasing agency may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, or terms and conditions.

(4) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the state and are approved for use by the CIO or his designee. State CIO.

History Note: Authority G.S. 143-135.9; 147-33.76(b)(1); 147-33.91; 147-33.95; 147-33.101; 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .0303 is proposed for amendment as follows:

**09 NCAC 06B .0303  ELECTRONIC, FACSIMILE AND TELEPHONE ELECTRONIC OFFERS**

ITS and agencies shall not accept electronic, facsimile, and telephone offers in response to solicitation documents that are required to be sealed, unless specifically approved by ITS procurement based on a determination that it is advantageous to the state. The purchasing agency may accept offers submitted electronically in response to solicitation documents if such offers comply with these Rules and applicable laws. The purchasing agency’s use of digital or electronic signatures must be consistent with applicable statutes and rules. The purchasing agency must authorize but may limit the use of electronic methods of conducting a procurement based on the State’s best interests, as determined by the Purchasing agency and approved by the State CIO.

**History Note:**  
Authority G.S. 147-33.103(b); 66-58.5; 66-325; 147-33.95;  
Temporary Adoption Eff. January 1, 2000;  
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B.0304 is proposed for amendment as follows:

09 NCAC 06B.0304 RECALL OF OFFERS
An authorized agent of a company offeror may recall an its offer prior to opening, through by delivering a signed request written request to withdraw prior to acceptance of any offer related to that procurement.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B.0305 is proposed for amendment as follows:

09 NCAC 06B.0305 PUBLIC OPENING

(a) ITS and agencies shall publicly open advertised sealed procurements using the lowest price technically acceptable source selection method at the time, date, and place identified in the solicitation document. At the time of opening, the names of the bidders shall become public record after compliance with all the requirements of the ITS sealed procurement process as in Rule .0302 of this Section.

(b) Under a two-step process, only those offerors that the agency that issued the solicitation determines to have acceptable technical offers shall be invited to submit price offers. The 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. After opening, the price offer(s) shall become public record if no negotiation is permitted. At least two agency working days shall be given prior to the opening. There shall be at least two agency employees present at the opening.

(c) Under a two-step process where negotiations are anticipated, only those offerors determined by the agency that issued the solicitation to have acceptable technical offers shall be invited to submit price offer(s). The 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. The price offer(s) shall become public record upon point of award. At least two agency working days shall be given prior to the opening. There shall be at least two agency employees present at the opening.

The purchasing agency shall publicly open and tabulate all offers at the time, date and place identified in the solicitation. The tabulation shall be made public at the time it is created unless otherwise provided by these Rules.

(a) At the time of opening, only the names of offerors and the goods or services offered shall be tabulated when negotiation after receipt of offers is authorized by the solicitation terms, unless otherwise provided by these Rules. The price offer(s) shall become available for public inspection at the time of the award.

(b) There shall be at least two purchasing agency employees present at the opening when “sealed offers” are required, and at least one purchasing agency employee present when electronic offers are required.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B.0306 is proposed for amendment as follows:

**09 NCAC 06B.0306  LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS OFFERS**

The agency or ITS shall not consider late offers, modifications, or withdrawals unless these would have been timely except for the action or inaction of agency or ITS personnel directly serving the procurement process. Offerors shall deliver all offers on time, regardless of the mode of delivery used. Offers not received by the due date and time as specified in the solicitation shall not be considered; or regardless of offeror’s mode of delivery or any other reason.

**History Note:** Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .0307 is proposed for amendment as follows:

09 NCAC 06B .0307  **ERROR/CLARIFICATION  CLERICAL ERRORS AND CLARIFICATIONS**
When the purchasing agency or ITS determines that an offer appears to contain an obvious error or otherwise where a clerical error is suspected, the purchasing agency or ITS may investigate or act upon the circumstances. Any action taken shall not prejudice the rights of the public or other offering companies, offerors. Where offers are submitted substantially in accordance with the solicitation document terms but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, the purchasing agency or ITS may seek and accept clarifications or may open communications provided that, in doing so, no change is permitted in prices, as permitted by Rule .0302 of this Subchapter. Clarifications shall not be utilized to cure material deficiencies or to negotiate.

**History Note:** Authority G.S. 147-33.103(b), 147-33.76(b)(1); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000. Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0308 is proposed for amendment as follows:

**09 NCAC 06B .0308 EXTENSION OF ACCEPTANCE TIME OFFER VALIDITY**

When the purchasing agency or ITS determines it is in the public State’s best interest, the purchasing agency or ITS may request that the offerors extend the time offered for the acceptance of offers, date through which the offers are valid. Requests by the State for time extensions of offer validity will not result in change to the prices as stated in the original offer unless so specified in the request to extend or subsequently agreed to by the purchasing agency in writing.

**History Note:**  Authority G.S. 147-33.103(b); 147-33.76(b)(1):
 Temporary Adoption Eff. January 1, 2000;
 Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0309 is proposed for amendment as follows:

09 NCAC 06B .0309 EVALUATION

(a) In determining the award of contracts, the purchasing agency or ITS shall consider and evaluate bona fide responsive and responsible offers as provided by statute and applicable rules. The agency or ITS shall identify in the solicitation document the evaluation criteria to be used in determining the award of contract.

(b) Unsigned offers shall be rejected by the awarding agency.

(c) During the period of evaluation and prior to award, only the information provided in the tabulation is public record.

(d) Only persons in the purchasing agency who are responsible for handling assigned to evaluate the offers and accompanying information, or who are otherwise assigned to participate in the procurement process, or and others whose participation may be determined necessary by the agency that issued the solicitation document, State CIO in the procurement process shall possess offers, including any accompanying information submitted with the offers or any information related to evaluation of offers, for the purpose of evaluation and concluding the award of contract process. Any communication with an offeror that may be necessary for purpose of clarification shall not be permitted except as deemed necessary approved by the State CIO or his designee to effectively conclude the evaluation of the award process.

(e) After award of the contract or when the need for the item good or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets subject to the provisions G.S. 132-1.2(1)(d). for public inspection except as set forth in Rule .1403 of this Subchapter and except as provided by law; provided however, that when a solicitation document is canceled and the purchasing agency intends to reissue the solicitation, information that is confidential under Rule .0103 of this Subchapter and offers received prior to cancellation shall be withheld from public inspection until the re-issued solicitation results in a contract or termination of the procurement.

History Note: Authority G.S. 147-33.76(b)(1); 147-33.95(a); 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .0310 is proposed for repeal:

**09 NCAC 06B .0310    NOTIFICATION OF AWARD**

If a solicitation is required to be advertised through ITS, then notice of the resulting contract award shall be posted via the ITS IT-procurement website by the agency issuing the solicitation document. After contract award, successful companies shall be notified in writing or electronically by the agency issuing the solicitation document.

*History Note:* Authority G.S. 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Repealed Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B.0311 is proposed for repeal:

09 NCAC 06B.0311  LACK OF COMPETITION
Where only a single offer or a single acceptable offer is received, the agency or ITS shall ascertain the reason and make it a matter of record.

History Note:  Authority G.S. 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Repealed Eff.
09 NCAC 06A and 06B Fiscal Impact Statement  
Office of Information Technology Services, November 2012

09 NCAC 06B .0312 is proposed for repeal:

09 NCAC 06B .0312  SOLICITATION DOCUMENTS  
An agency or ITS shall use a solicitation document when soliciting offers on contracts valued over five thousand dollars ($5,000) unless the CIO or his designee waives the requirement pursuant to rule. In their solicitation documents, the agencies and ITS shall require offerors to certify that each offer is submitted competitively and without collusion.

History Note:  Authority G.S. 147-33.100; 147-33.103(b);  
Temporary Adoption Eff. January 1, 2000;  
Repealed Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0313 is proposed for amendment as follows:

09 NCAC 06B .0313 DIVISION OF REQUIREMENTS, COMMODITIES AND SERVICE NEEDS
An agency or ITS shall not divide requirements. Commodities and service needs shall not be divided to keep the expenditure under its purchasing agency’s delegation and thereby to avoid following the appropriate contracting requirement, procurement processes and applicable rules. In the case of similar and related items and groups of items, the dollar limits of delegated authority apply to the total cost of ownership rather than the cost of any single item.

History Note: Authority G.S. 147-33.76(b)(1); 147-33.101; 447-33.103(b); 147-135.9; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000. Amended Eff.
09 NCAC 06B .0314 is proposed for amendment as follows:

09 NCAC 06B .0314  ADVERTISEMENT REQUIREMENTS AND NOTICE

(a) All advertisements required by rule shall be through the ITS IT procurement website. Solicitations required by rule shall be advertised at least once and at least 10 days prior to the date designated for opening unless the CIO or his designee waives advertising requirements. Conditions permitting waiver of advertising requirements shall include, but not be limited to the following:

1. Acquisition of goods or services subject to rapid price fluctuations or immediate acceptance;
2. Emergency situations (pressing need);
3. Acquisition of goods or services needed for any ongoing job, task, or project;
4. Acquisition of goods or services where performance or price competition is not available; and
5. Any determination that no useful purpose would be served by requiring advertisement.

(b) This Rule does not prevent solicitation of offers by additional direct mailings or additional advertisement by an agency.

(c) Agencies required by rule to advertise their solicitations shall electronically transmit the required data to the ITS IT procurement website. 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 good or service); 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.

(d) Within three agency working days from the award of an advertised contract, agencies shall electronically transmit an award notice directly to the ITS IT procurement website, unless there is a valid reason for not posting such information. The award notice shall be posted for at least 30 calendar days. This award notice shall identify the contract and award information.

(e) Exceptions to this Rule are as follows:

1. When the agency’s executive officer or his designee deems 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 ITS so ITS may transmit it electronically or the agency may place the advertisement (excluding the complete solicitation document) via newspaper. If advertised via newspaper, the agency that issued the solicitation document shall be responsible for the advertisement and the award notice shall not be required. Some valid reasons include, but are not limited to, computer equipment failure and networking difficulties. The rationale for waiver of electronic advertising requirements shall be documented and become part of the public record.

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 that 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 ITS IT procurement website, 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
shall instruct anyone inquiring about the solicitation on the ITS IT procurement website to contact the agency for a hard copy.

(a) Requirement to advertise, publish and notify:

(1) Solicitations: To maintain transparency and encourage competition for award of business, the purchasing agency shall advertise and publish solicitations for purchases exceeding the general delegation as established by the State CIO for no less than 10 calendar days, unless the State CIO waives the requirement for advertising.

(2) Addenda or Changes: Any changes or addenda to a solicitation must be advertised and published with enough time to allow for reasonable consideration and possible incorporation of the change into potentially competing vendors’ response offers. Any changes or addenda to a solicitation must be advertised and published for no less than two business days from the scheduled offer due and opening date, unless the State CIO waives the requirement to advertise and publish changes or addenda to a solicitation.

(3) Notices of Award: To maintain transparency and promote future competitiveness, the Notice of Award shall be advertised for no less than 30 calendar days, unless the State CIO waives the requirement to advertise, publish, and issue Notice of Award.

(4) Waiver of Requirement to Advertise and Notify:

(A) Conditions permitting State CIO to waive the requirement to advertise and notify include:

(i) Acquisition of commodities or services that are subject to rapid price fluctuations or immediate acceptance;

(ii) Emergency situations or pressing needs;

(iii) Acquisition of goods or services needed for any ongoing job, task, or project;

(iv) Acquisition of goods or services where performance or price competition is not available;

(v) Any determination that no useful purpose would be served by requiring such; or

(vi) Exceptions identified under .1303 of this Subchapter.

(B) The conditions and approval for waiver to advertise, publish, and notify any part of a procurement action shall be documented and become part of the file, open for public inspection after the award.

(b) Required method for Advertising, Publishing, and Notifying: To maintain transparency and promote competitiveness:

(1) Solicitations:

(A) The purchasing agency shall electronically advertise and continually publish solicitations via posting to the State’s designated IT procurement website, unless a waiver of advertisement method is granted by ITS.

(B) This Rule does not preclude a purchasing agency from soliciting offers by additional direct mailings or additional advertisement.
(C) Required Advertisement and publication data shall include all relevant information pertaining to contacts and due dates, and the complete solicitation document and any attachments (i.e., specifications; requirements; terms and conditions; price model; etc.).

(D) If a purchasing agency head (or his/her designee) determines that it is not feasible to electronically transmit (due to file size, etc.) a particular solicitation document or attachment(s) through the required method (e.g., a procurement library, architecture reference documents, price model forms, etc.), then the purchasing agency must still electronically transmit a summary notice or advertisement through the designated IT Procurement website. In such instance, the advertisement shall include the required information with the addition of a brief explanation for why the entire solicitation is not included, and shall instruct anyone inquiring about the solicitation to contact the purchasing agency for a copy of the actual solicitation document and any respective attachments.

(E) Specifically, the required advertisement information shall include:

(i) Purchasing agency name and website reference, and designated IT procurement website reference;

(ii) Assigned purchasing agency contact’s name, telephone number, and electronic mail address;

(iii) Location address for delivery/receipt of offers;

(iv) Solicitation identification number or reference;

(v) Title (i.e., scope or short description of the good or service solicited);

(vi) Due date(s) and time(s) for any conference or site visit meeting(s) scheduled, and whether attendance is mandatory or optional;

(vii) Due date and time for solicitation clarifications or questions; and

(viii) Date, time, and location for opening of offers received.

(F) In addition to the specifications, offer terms, and conditions, award terms and conditions, etc., the solicitation document must furnish the due date and time, method of request, e.g., regular mail, or electronically via e-mail or facsimile, etc., an address for receipt of requests for solicitation clarifications or questions.

(G) If the solicitation includes a conference or site visit, this information shall also be furnished within the solicitation document, to include: date; time; and location; assigned meeting contact person and that contact person’s telephone number and electronic mail address; and other relevant information relating to attendance (e.g., whether potential offeror attendance is mandatory or optional, space limitations and number of attendees allowed per vendor, etc.). If no conference or site visit is scheduled, then this shall be stated in the advertisement and the solicitation document.

(2) Addenda or Changes: The same advertisement method that is approved and followed for publishing a solicitation document must also be followed for publishing any respective addenda or changes to the solicitation and resulting notice of award, unless otherwise directed by ITS.
(3) Notices of Award:
(A) To the extent practicable, the purchasing agency shall simultaneously issue individual Notice of Award to all offerors responding to the respective solicitation and shall publish Notice of Award via the approved method of advertisement for that solicitation and addendum(a).
(B) Notice of Award shall summarize the resulting contract award information, including identification of the advertised solicitation; the awardee name and location; scope; start and end dates; authorized value through original end date; and renewal options.

(4) Exceptions to Required Method:
(A) When the purchasing agency (or his/her designee) deems there is a valid reason to not publish via the State’s designated IT procurement website, he/she may request from ITS a waiver to the required method for advertising, publishing, and notifying.
(B) Valid reasons to request a waiver to the required method include, computer failure and networking difficulties, etc.
(C) The purchasing agency’s request for waiver of required method shall include the rationale for requesting, a description of a proposed alternate method, length of time proposed for advertising, and explanation if the solicitation document and any attachments or addenda will not be included or published with the advertisement.
(D) The purchasing agency’s proposed alternate method to the State’s designated IT procurement website must be via other medium widely distributed or commonly available to the public, such as publishing in a newspaper, etc.
(E) The rational for requesting waiver of required advertising method, requested alternate method, and respective ITS approval, shall be documented and become part of the procurement file, open for public inspection after award.

History Note: Authority G.S. 147-33.76; 147-33.103(b); 147-33.76(b)(1);
Amended Eff.
09 NCAC 06B .0315 is proposed for amendment as follows:

**09 NCAC 06B .0315 MANDATORY CONFERENCES/SITE VISITS**

(a) When a solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, then the date, time, location, and other pertinent details of the conference or site visit relating to attendance shall be given in the solicitation document and in the advertisement (if required by rule).

(b) If only one potential offeror attends the mandatory conference or mandatory site visit, the conference or site visit may be conducted, but the purchasing agency shall investigate, as much as is practicable, why only one potential offeror was in attendance and endeavor to ascertain if there is any competition available. If it is determined that competition is available, time permitting, the purchasing agency may schedule another conference or site visit, if deemed to be to the advantage of the state. If it is determined that there is no competition available, then the procurement may be handled as a waiver as permitted by rule.

(c) The purchasing agency shall document details of the conference or site visit as part of the official records required in Rule .1402 of this Subchapter.

(d) Any and all questions or clarifications by a potential offeror regarding a solicitation document shall be addressed to the purchasing agency contact so designated in the solicitation. Any and all revisions to the solicitation document shall be made only by written published addendum from the purchasing agency. Verbal communications from whatever source are of no force or effect.

**History Note:**

Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .0316 is proposed for adoption as follows:

**09 NCAC 06B .0316  NEGOTIATION**

(a) The purchasing agency shall conduct negotiations under its general delegation. Negotiations may also be conducted to establish contracts exceeding the purchasing agency’s delegation, if the purchasing agency received prior approval to negotiate from ITS or the State CIO.

(b) If a purchasing agency deems negotiations to be advantageous to the State after receiving offers and then determining that soliciting offers again would serve no purpose, the purchasing agency may then conduct negotiations with sources of supply that appear to be capable of satisfying the purchasing agency’s business needs. The purchasing agency’s negotiations may be conducted by procedures approved by ITS, but shall be finalized in writing and shall include standard language and terms and conditions issued by ITS, or such terms as may be established pursuant to subsections (c) or (d) below. If the purchasing agency’s negotiations are conducted with only one offeror, or if only one offeror responds to a request to negotiate, then the purchasing agency shall document the reasons for the lack of competition as part of the procurement record under Rule .1402 of this Subchapter.

(c) Purchasing agency negotiations may be conducted under Section 0900 of this Subchapter when conditions merit a limited or waiver of competition or in other situations that are advantageous to the State as determined by the State CIO.

(d) Modifications, waivers, or any other changes or amendments to a solicitation, including language and terms and conditions issued by ITS, made in the course of negotiations must be accompanied by:

1. Approval of the negotiating agency;
2. Requested approval from ITS;
3. Appropriate evaluation documentation reflecting trade-offs between price and non-price factors; and
4. Such other documentation as ITS may require.

(e) Negotiations shall not materially alter the intent or scope of the original solicitation document.

**History Note:** Authority G.S. 147-33.76(b)(1);

Eff.
SECTION .0400 – REJECTION OF OFFERS

09 NCAC 06B .0401 is proposed for amendment as follows:

09 NCAC 06B .0401 BASIS FOR REJECTION OF OFFERS

(a) In soliciting offers, the agency or ITS may reject any offer in whole or in part. Basis for rejection shall include, but not be limited to, the agency or ITS deeming late offers; the purchasing agency’s determination that the offer is unsatisfactory as to quantity, quality, delivery, price or service offered; the offer not complying offeror’s failure to comply with the intent or conditions of the solicitation document or with the intent of the proposed contract; document; the lack of competitiveness by reason of due to collusion or otherwise or due to the 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 in the intended project or other determination that the proposed requirement commodity or service is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the lowest priced or highest qualified technically acceptable offer or the best value offer; or any determination that rejection would be to the best interest of the state.

(b) Unsigned offers shall be rejected by the purchasing agency.

(c) The purchasing agency shall reject late offers and shall not consider modification of offers or withdrawals of offers unless these would have been timely, except for the action or inaction of the agency personnel directly serving the procurement process.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000. Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0402 is proposed for repeal:

09 NCAC 06B .0402 PUBLIC RECORD
Action in rejecting offers in whole or in part shall be made a matter of record.

History Note: Authority G.S. 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Repealed Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0403 is proposed for repeal:

09 NCAC 06B .0403  NEGOTIATION
If an agency or ITS does not receive an offer that is deemed to be advantageous to the state in response to a solicitation or all offers are rejected and if it is determined that soliciting offers again would serve no purpose, negotiations may be conducted with sources of supply that may be capable of satisfying the requirement. The negotiations shall be conducted by that agency or ITS if under their delegation. Negotiations shall be conducted in writing and shall include standard language and terms and conditions issued by ITS. 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 to the state as determined by the CIO or his designee.

History Note: Authority G.S. 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Repealed Eff.
09 NCAC 06B .0404 is proposed for adoption as follows:

**09 NCAC 06B .0404 NOTICE OF REJECTION**

(a) The purchasing agency shall not be required to provide notice of rejection of offers prior to approval and award of a contract.

(b) When a competitive range is established by the purchasing agency’s evaluation committee, and offers are not included in such range, the purchasing agency may provide notice to an offeror that its offer is excluded, consistent with this Rule and as established in the solicitation.

(c) The purchasing agency may grant requests for debriefings as provided herein, consistent with this Rule and as may be established in solicitation documents.

*History Note:* Authority G.S. 147-33.76(b)(1); Eff.
09 NCAC 06B .0405 is proposed for adoption as follows:

09 NCAC 06B .0405  DEBRIEFING OFFERORS

(a) Pre- or Post-Award Debriefings of successful and unsuccessful offerors may be completed by personal meeting, by written or electronic communication (e.g., telephone, email, etc.), or by any other method acceptable to the purchasing agency and ITS.

(b) Debriefing shall not include point-by-point comparisons of the debriefed offeror’s proposal with those of other offerors. Moreover, debriefing shall not reveal any information not then available for public inspection, properly designated as confidential in accordance with Rule .1001 of this Subchapter, the N.C. Public Records Law, or any other applicable laws.

(c) If debriefing is authorized by terms of the solicitation:

(1) The purchasing agency shall implement the debriefing process as follows:

   (A) Include an official summary of the debriefing in the record, per Rule .1402 of this Subchapter, by the protest-period due-date.

   (B) To the maximum extent practicable, schedule a debriefing within five business days after receipt of an offeror’s written request for a debriefing.

   (C) If requested, grant, at its discretion, rejected offeror(s) a delayed debriefing for any good cause shown by that requesting offeror.

   (D) Accommodation of a competing offeror request for delayed debriefing does not extend the due dates for filing protests.

(2) All competing offerors may request a debriefing by submission of a written request to the purchasing agency not more than three business days from notice of award date.

(3) Offeror may, if notified that it is not included in the competitive range:

   (A) Request a pre-award debriefing by delivering such request to the purchasing agency not more than three business days after the notice of rejection date; or

   (B) Request a post-award debriefing in lieu of the pre-award debriefing by delivering request for such not more than three business days after the notice of rejection date; or

   (C) Request a post-award debriefing by delivering request for such not more than three business days after notice of award date.

(4) Debriefing shall include review of the committee’s evaluation of vendor’s proposal/offer per terms of the solicitation, including:

   (A) Any weaknesses, deficiencies, or risks to the purchasing agency, identified in evaluation of the offerer’s proposal

   (B) Evaluated cost or price (including unit prices) and the State’s total cost of ownership;

   (C) Evaluated vendor responsibility to proposal, including past performance information, etc., as applicable;

   (D) Evaluated vendor responsiveness and the technical merit of its proposal;

   (E) Responses to relevant questions about whether source selection procedures, applicable regulations, or other applicable authorities, were followed;

   (F) If debriefing is post-award, the information must include the above and may also include:
(i) Overall ranking of all offerors; and
(ii) A summary of the evaluation and rationale for award to the successful offeror.

History Note: Authority G.S. 147-33.76(b)(1):

Eff.
09 NCAC 06B .0501 is proposed for amendment as follows:

**09 NCAC 06B .0501 RESPONSIBILITY**

The receiving purchasing agency shall inspect all materials, supplies, and equipment upon delivery to ensure verify compliance with the contract requirements and specifications. The purchasing agency shall also be responsible for verifying that services as provided comply with the terms of a contract.

**History Note:**

Authority G.S. 147-33.103(b); 147-33.76(b)(1):
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0502 is proposed for amendment as follows:

09 NCAC 06B .0502  SELECTION INSPECTION
ITS may periodically inspect any items, deliverables or monitor performance to ensure that contractor compliance with contract specifications and terms are met. The purchasing agency must ensure that goods or services purchased comply with applicable codes, statutes, local ordinances, policies or and safety requirements.

History Note:  Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0503 is proposed for amendment as follows:

09 NCAC 06B .0503 SAMPLES
When samples are required in response to a solicitation document, the purchasing agency may test those samples or have them tested at other designated facilities. Samples shall not be sent directly to laboratories outside the agency unless it is determined by the agency that these facilities have the capability, time, or expertise needed.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0504 is proposed for amendment as follows:

09 NCAC 06B .0504  MODIFICATIONS TO CONTRACT SPECIFICATIONS
When the purchasing agency that awarded the contract or ITS determines it to be advantageous to the state, in the State’s best interest, it may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration. If an increase in cost results in the total contract value being more than the purchasing agency’s delegation, then the purchasing agency shall obtain prior written approval from ITS, regardless of what agency initially awarded the contract. ITS.

History Note:  Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0505 is proposed for amendment as follows:

09 NCAC 06B .0505  REPORT OF DISCREPANCY
Where goods or services delivered fail to meet the specifications or contract requirements, the discrepancy shall be resolved by the purchasing agency that issued the solicitation document.

History Note:  Authority G.S. 147-33.76(b1); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
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SECTION .0600 – GUARANTEES AND WARRANTIES

09 NCAC 06B .0601 is proposed for amendment as follows:

09 NCAC 06B .0601 ENFORCEMENT

Using agencies The purchasing agency shall enforce the contractual guarantee or warranty applying to the goods or services purchased.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0602 is proposed for amendment as follows:

09 NCAC 06B .0602 REPORT TO PURCHASING ITS

If any agency has difficulty The purchasing agency shall report to ITS any difficulties in obtaining satisfactory performance including service as provided for in a guarantee or warranty, under a contract handled by ITS, the agency shall refer the matter to ITS warranty.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B.0603 is proposed for amendment as follows:

**09 NCAC 06B.0603 RESPONSIBILITY OF USING PURCHASING AGENCY**

The using purchasing agency must notify the vendor promptly when latent or other defects are discovered. In the event the vendor fails to remedy the condition reported and the contract was handled by ITS, the matter shall be referred to ITS.

**History Note:** Authority G.S. 147-33.103(b); 147-33.76(b)(1); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000. Amended Eff.
SECTION .0700 - CONTRACTS

09 NCAC 06B .0701 is proposed for amendment as follows:

09 NCAC 06B .0701 USE AND DESCRIPTION

State IT contracts are binding agreements between the state and successful offerors to provide information technology goods or services in accordance with stipulated terms and conditions.

(a) Term Contracts

(b) A term contract is a binding agreement between the purchaser and seller to buy and sell offeror for certain goods or services for a specific period of time at prices established by the contract.

(c) A Statewide term contracts consolidate contract consolidates normal, anticipated requirements of all State purchasing agencies into one agreement and shall be handled awarded by ITS. No purchasing agency may purchase IT goods or services covered by included in a statewide term contract from any other source unless authorized by the CIO or his designee, State CIO.

(b) A term contract shall be based upon competition, where available, with potential vendors being advised as to the actual business they are competing for and, if successful, the business they have earned.

(c) Agencies A purchasing agency may handle issue and shall award agency specific term contracts for its use by their agency if the estimated expenditure during the term life of the contract is under the agency’s delegation and the good or service is not covered by included in a statewide term contract.

(d) If an agency documents to ITS a need to establish an agency specific term contract for which the expenditure during the term life of the contract exceeds the agency’s general delegation and is not covered by a statewide term contract, ITS the purchasing agency, with ITS approval, may issue a solicitation document for the purpose of awarding an agency specific term contract for use by the requesting purchasing agency in accordance with the determining factors set forth in Rule .0702 of this Section.

Subchapter.

(b) Convenience Contracts

(a) Convenience contracts are A statewide IT convenience contract is an agreement awarded by ITS for an indefinite quantity contracts that are awarded by ITS of goods or services that may be used by state agencies a State purchasing agency, to purchase goods or services at the agency’s discretion. Convenience contracts function like statewide term contracts, but their use by agencies is are not mandatory, mandatory-use agreements.

(b) If an agency elects not to purchase the goods or services it requires from an established convenience contract, the rules of competitive bidding apply to the acquisition, then that agency must comply with Rule .0301 of this Subchapter.

(c) Master Agreements are A master IT agreement is an agreement between a vendor and the state that applies to multiple contracts or purchase orders that include standard terms and conditions.

1. Goods or Services are, or may be, procured from resellers, Value Added Resellers (VARs), Original Equipment Manufacturers (OEMs), or others who represent the master agreement vendor;
(2) Goods or Services are proprietary intellectual property of the master agreement vendor; and
(3) Master agreements are established without competitive bidding.

(d) Master agreements may result in agency or statewide term or convenience contracts.

(e) Solicitations and Vendor offers may modify terms of a master agreement if the State’s best interests are served, if such is allowed via the terms of the solicitation.

(f) Terms and conditions, in addition to ITS standard terms and conditions, may be negotiated. Waiver of a standard term or condition must be approved by the State CIO.

(g) Pricing under a master agreement may be established for a time certain, after which periodic reviews and re-pricing may be completed and agreed by the parties.

**History Note:**

Authority G.S. 147-33.103(b); 147.33-76(b)(1)

Temporary Adoption Eff. January 1, 2000;


Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .0702 is proposed for amendment as follows:

09 NCAC 06B .0702 DETERMINING FACTORS

(a) In determining whether a good or service will be **on included in** a statewide IT term or convenience contract, **ITS the State CIO shall consider** such factors as volume, nature of the good or service, repetitiveness of use, relative stability of prices, and **delivery or** transportation costs.

(b) In determining whether a good or service will be **on included in** an agency specific term contract, the agency shall consider available statewide term and convenience contracts, and **it shall consider** such factors as volume, nature of the product or service, repetitiveness of use, relative stability of prices, and transportation costs.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .0703 is proposed for amendment as follows:

**09 NCAC 06B .0703**  
**EXTENSION OF CONTRACT TERMINATION DATES**

When in the public interest, contractors, best interest of the State, offerors may be requested to extend the scheduled termination dates of contracts. Such extensions shall not result in a change in the prices stated in the original contract unless agreed to by the agency in writing. Extensions that result in a cumulative contract value exceeding an agency’s delegation must be submitted to ITS for approval.

**History Note:**  
Authority G.S. 147-33.103(b); 147-33.76(b)(1);  
Temporary Adoption Eff. January 1, 2000;  
Amended Eff.
09 NCAC 06B .0801 is proposed for amendment as follows:

09 NCAC 06B .0801 USE
(a) Partial, progressive or multiple awards may be made where it is advantageous to the State.
(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. Quantities shall not be divided among companies on definite quantity requirements unless and except as provided in the solicitation document and unless such division is determined to be in the best interest of the State.

History Note: Authority G.S. 147-33.103(b), 147-33.76(b)(1);
Amended Eff.
SECTION 0900 – WAIVER OF COMPETITION

09 NCAC 06B .0901 is proposed for amendment as follows:

09 NCAC 06B .0901   POLICY CONDITIONS FOR LIMITED OR WAIVED COMPETITION

(a) Under conditions listed in this Rule, and otherwise if deemed to be in the public interest by the CIO or his designee, competition may be waived, limited or waived where a factual basis demonstrates support of one or more of the conditions set forth in subsection (b). If the procurement is under the within a purchasing agency’s general delegation of the agency, delegation, then the purchasing agency may waive competition in conformance with this rule. Rule. If the procurement is over greater than the agency agency’s delegation, requests for waiver limited or waived competition shall be submitted to ITS for appropriate determination, the State CIO for approval.

(b) Competition may be limited or waived under the following conditions:

1. where competition is not available;
2. where a needed product or service is available from only one source of supply;
3. where emergency action is indicated;
4. where competition has been solicited but no satisfactory responsive offers have been received;
5. where standardization or compatibility is the overriding consideration;
6. where a donation predicates the source of supply;
7. where personal or particular professional services are required;
8. where a product or service is needed for a person with disabilities and there are overriding considerations for its use;
9. where additional products or services are needed to complete an ongoing job or task;
10. where a particular product or service is desired for educational, training, experimental, developmental or research work;
11. where equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
12. where items are subject to rapid price fluctuation or immediate acceptance;
13. where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies persons or entities that thwarts normal competitive procedures;
14. where a purchase is being made and a price is available from a previous contract;
15. where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and
16. where a used item(s) is available on short notice and subject to prior sale.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000. Amended Eff.
09 NCAC 06B .0902 is proposed for amendment as follows:

09 NCAC 06B .0902 APPROVAL AND DOCUMENTATION

Although competition may be waived pursuant to Rule .0901 of this Section, the use of competition is required wherever practicable. An exception is not approved. Where a limitation on waiver of competition is contemplated, approved as provided in Rule .0901, agencies may negotiate negotiations with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions, may be conducted, when the expenditure is less than their respective benchmark or delegation. Documentation justifying waiving the competitive process must be attached to the record of this type of procurement. The procurement process of requesting or inviting an offer(s) shall be handled by the agency, including standard language terms and conditions issued by ITS. Under an emergency or pressing need situation, the procurement process requesting or inviting an offer(s) shall be handled by the agency, including standard language terms and conditions issued by ITS, unless circumstances prohibit their use. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding the delegation if the agency has received prior approval from ITS. All actions that exceed the benchmark are subject to the conditions of Rule .1102 of this Subchapter.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .1001 is proposed for amendment as follows:

**09 NCAC 06B .1001  CONFIDENTIALITY**

(a) The offeror may designate information as a trade secret pursuant to G.S. 132-1.2 and may otherwise designate information as confidential as provided by law, citing the applicable statute on which the claim of confidentiality is made (e.g., Only documents meeting the criteria of North Carolina’s Trade Secret Protection Act may be so designated where a document meets the Trade Secret Act requirements, requirements, etc.). Trade secrets that the offeror does not wish disclosed shall be identified on Offerors shall identify each page containing confidential information in boldface at the top and bottom; e.g., as "CONFIDENTIAL". Cost information Cost(s) presented in response to a solicitation shall not be deemed confidential.

(b) To promote maximum competition and to protect the public competitive procedure from being used to obtain information that would normally not be available otherwise, the purchasing agency that issued the solicitation document may maintain the confidentiality of trade secrets, as determined by North Carolina law, and like information as the CIO or his designee or the agency's executive officer or his designee may determine necessary to ensure the integrity of the public purchasing process. those portions of an offer properly designated as confidential.

**History Note:** Authority G.S. 132-1.2; 147-33.76(b)(1); 147-33.95(a); 447-33.103(a); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000. Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement  
Office of Information Technology Services, November 2012

09 NCAC 06B .1002 is proposed for amendment as follows:

09 NCAC 06B .1002 PAYMENT PLANS
Purchase contracts Contracts may provide for payment over a period of time. Such instances shall carry written prior approval of the administrative head of the agency. Administrative purchasing agency head. Agency heads and governing boards of agencies an agency shall see ensure that the agency complies with statutory or other prohibitions are not violated. The intended plan of payment shall be included in the procurement document, and State fiscal requirements.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B.1003 is proposed for amendment as follows:

**09 NCAC 06B.1003 CHANGE IN CORPORATE STRUCTURE OR ASSIGNMENT**

The state’s contracts shall not be assigned without prior written approval by the State. In cases where the vendor seeks to assign its contract, prior to the State’s written approval of an assignment, the vendor assignor shall affirm in writing to the State that the assignee is fully capable of performing all obligations of the vendor under the contract. In cases where contractors vendors who have been awarded contracts are involved in corporate consolidations, acquisitions, or mergers; the purchasing agency that 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.

*History Note:* Authority G.S. 147-33.103(4); 147-33.76(1);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B.1004 is proposed for amendment as follows:

09 NCAC 06B .1004 PURCHASING FROM OR THROUGH AGENCY EMPLOYEES

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

History Note: Authority G.S. 147.33.103(b); 147.33.76(b)(1)
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .1005 is proposed for amendment as follows:

**09 NCAC 06B .1005  ANTITRUST VIOLATIONS ANTICOMPETITIVE, DECEPTIVE, AND FRAUDULENT PRACTICES**

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. The agency that issued the solicitation documents shall report suspected antitrust violation to appropriate law enforcement authorities.

(a) A purchasing agency shall act to prevent the continuance of anticompetitive, deceptive, or fraudulent practices. Anticompetitive practices include actions involving offerors 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;
6. Agreements to:
   - (A) Rotate offers;
   - (B) Share the profits with an offeror who is not the low offeror;
   - (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.

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

1. Rejection of the offending offeror’s offer;
2. Award of bid to an offeror with a cost or technical proposal that is evaluated lower than the offending offeror’s proposal; and
3. Recommend to ITS suspension of an offeror from doing business with the State.

(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.

__History Note:__ Authority G.S. 147-33.103(b); 75-1, et seq.; 133-24, et seq.; 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Eff August 1, 2000.
Amended Eff.
09 NCAC 06B.1006 is proposed for amendment as follows:

09 NCAC 06B.1006   COOPERATIVE PURCHASING

Where When an agency or ITS is a participant participates in a cooperative project with another governmental entity or with a non-profit organization, goods and services necessary to for the project shall be acquired procured according to rules the Rules in this Chapter. However, if If the interest of the state State would be better served by one of the following acquisition procurement methods, the State CIO or his designee may authorize that acquisition method to be used, procurement by:

(1) by making Making or authorizing acquisition on behalf of such governmental activity entity or non-profit organization; or

(2) by authorizing Authorizing acquisition on the state’s State’s behalf under the provisions of another state or another governmental entity, provided due consideration is given by the State CIO or his designee to the differences in purchasing rules, regulations, and procedures of the contracting entity; or

(3) Authorizing acquisition on the State’s behalf under provisions of the U.S. General Services Administration Supply Schedule 70 and Consolidated Schedule for Information Technology purchases.

History Note: Authority G.S. 147-33.103(b); 147-33.76(b)(1); 147-33.95(b)(2)(a);
Temporary Adoption Eff. January 1, 2000;
Amended Eff.
09 NCAC 06B .1008 is proposed for repeal as follows:

09 NCAC 06B .1008 BOARD OF AWARDS

(a) When the dollar value of a contract for the purchase, lease, or lease/purchase of IT goods exceeds the benchmark, the Board of Awards (Board) shall canvass ITS' recommended action. This also includes reporting of emergency and pressing need purchases over the benchmark. The CIO may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that the Board is not available. ITS shall submit the Board's recommendation (award, cancellation, approval, negotiation, etc.) to the CIO. The CIO may either concur with the recommendation of the Board by awarding contracts or approving other recommended action or take other action as deemed necessary.

(b) Exemptions: Review by the Board and approval by the CIO is not required for the following purchase actions: exemption by statute, by rule, by special delegation, or where one agency is buying from another agency or through the State Surplus Property Agency or the State Agency for Federal Surplus Property.

NOTE: This Rule has been re-codified as part of 09 NCAC 06A .0103, “Benchmark and the Board of Awards.”

History Note: Authority G.S. 143-52.1; 147-33.76(b)(1); 147-33.95; 147-33.101; 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Repealed Eff.
SECTION .1100 BID PROTEST, CONTESTED CASE PROCEDURE

09 NCAC 06B .1101 is proposed for amendment as follows:

09 NCAC 06B .1101 RIGHT TO HEARING

Whenever the Office of Information Technology Services (ITS) acts in such a way as to affect the rights, duties, or privileges of a party, the party may appeal for a final decision by ITS in accordance with this Section and G.S. 150B, Article 3A.

History Note: Authority G.S. 150B-38;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. _____; March 1, 2001;
09 NCAC 06B .1102 is proposed for amendment as follows:

09 NCAC 06B .1102 PROTEST PROCEDURES FOR AWARD OF CONTRACTS

(a) To ensure fairness to all offerors and to promote open competition, agencies the purchasing agency and ITS shall actively and consistently respond to an offeror's protest over IT contract awards.

(b) This Rule applies to IT contracts with an estimated value over of twenty-five thousand dollars ($25,000) or more. Agencies The purchasing agency may shall establish procedures to handle address protests by offerors with less value, where the award value is less than twenty-five thousand dollars ($25,000).

(c) When an offeror wants to protest a contract awarded by an agency over of twenty-five thousand dollars ($25,000) or more in value, the agency and the offeror shall comply with the following:

   (1) The offeror shall submit deliver a written request for a protest meeting to the agency's executive officer agency head or his designee within 15 calendar days from the date of contract award. The executive officer agency head shall furnish a copy of the written request to the ITS Chief Procurement Officer (CPO) State CIO within ten 10 calendar days of receipt. The offeror's request shall contain specific reasons and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the executive officer agency head determines that a meeting would serve no purpose, then the executive officer, agency head, within ten 10 calendar days from the date of receipt, may respond in writing to the offeror and refuse the protest meeting request. A copy of the executive officer's agency head’s or his/her designee’s letter shall be forwarded to the CPO, State CIO.

   (2) If the protest meeting is granted, the agency's executive officer agency head shall attempt to give written notice to the State CIO and any awarded vendor of the date and time of the protest meeting. The agency shall give notice to the awarded vendor and the State CIO stating whether any purchase order or performance has been suspended or terminated. The agency head shall schedule the meeting within 30 calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the executive officer agency head shall respond to the offeror in writing with an agency decision. A copy of the executive officer’s agency head’s letter shall be forwarded to the CPO, State CIO.

   (3) If a protest is determined to be valid by the State CIO then the following outcomes may occur:

      (A) The award and issued purchase order shall be canceled and the solicitation for offers to contract is not re-bid;

      (B) The award and issued purchase order shall be canceled and the solicitation for offers to contract is re-bid;

      (C) The award and issued purchase order shall be canceled and the contract shall be awarded to the next lowest priced, technically competent, qualified offeror, if that offeror agrees to still honor its submitted bid.

(d) When an offeror wants to protest a contract awarded by ITS or the CIO that is over twenty-five thousand dollars ($25,000) or more in value, the CPO ITS and the offeror shall comply with the following:

   (1) The offeror shall submit deliver a written request for a protest meeting to the CPO State CIO within 15 calendar days from the date of contract award. The offeror's request shall contain specific reasons and
any supportive documentation regarding why there is a the offeror’s concern with the award. If the request does not contain this information or the CPO State CIO determines that a meeting would serve no purpose, then the CPO, State CIO, within ten 10 calendar days from the date of receipt of the letter, offeror’s protest, may respond in writing to the offeror and refuse the protest meeting request. A copy of the CPO’s State CIO’s letter shall be forwarded to the ITS hearing officer.

(2) If the protest meeting is granted, the CPO State CIO shall attempt to schedule the meeting within 30 calendar days after receipt of the letter, offerer’s protest, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the CPO State CIO shall respond to the offeror in writing with a decision. A copy of the decision shall be forwarded to the ITS hearing officer.

(e) When an offeror wants to protest a statewide term or convenience contract or master agreement established by ITS, ITS and the offeror shall comply with the following:

(1) The offeror shall deliver a written request for a protest meeting to the State CIO within 15 calendars days from the date of the contract award. The offeror’s request shall contain specific reasons and any supporting documentation regarding the offeror’s concern with the award. If the request does not contain this information or the State CIO determines that a meeting would serve no purpose, the State CIO, within 10 calendar days from the date of receipt of the offeror’s request shall respond in writing to the offeror and refuse the protest meeting request. A copy of the State CIO’s letter shall be forwarded to the ITS hearing officer.

(2) If the protest meeting is granted, the State CIO shall give written notice to the ITS hearing officer and any awarded vendor of the date and time of the protest meeting. Notice shall be given to the awarded vendor and ITS hearing officer stating whether any purchase order or performance has been suspended or terminated. The State CIO shall schedule the meeting within 30 calendar days after receipt of the offerer’s protest, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the State CIO shall respond to the protesting offeror in writing with a decision. A copy of the decision shall be forwarded to the ITS hearing officer.

(f) If an offeror a party desires further administrative review after receiving a decision under Paragraph (c) or (d) (e), (d), or (e) of this Rule, the protesting party may, within 30 days from the date such decision is received, request a hearing and final decision by the State CIO in accordance with these Rules and Article 3A 3A of G.S. 150B. When further administrative review involves a contract awarded by an agency that is over twenty-five thousand dollars ($25,000) or more in value, the agency shall be a party in any further review processes.

(g) The signature of an attorney or party on a request for a protest constitutes a certification by the signer that the signer has read such document; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose such as to harass, cause unnecessary delay or a needless increase in the cost of the procurement or of the litigation. If a protest is determined by the hearing officer or any subsequent appellate court proceeding to be frivolous or to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious, the State CIO, upon motion or upon his own initiative, may impose upon the person who signed it, a represented party, or both, prohibition upon the party from participation in any IT solicitation or award for a period of up to one year. Notification to the affected party shall be in writing.
History Note: Authority G.S. 127-33.103(b); 147-33.76(b)(1); 150B-38;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. _____; March 1, 2001;
09 NCAC 06B .1103 is proposed for amendment as follows:

09 NCAC 06B .1103  REQUEST FOR HEARING

(a) A request for an administrative hearing under Rule .1010 .1101 of this Section Subchapter must be in writing and shall contain the following information:

(1) name and address of the person requesting the hearing;
(2) a concise statement of the departmental action being challenged;
(3) a concise statement of the manner in which the petitioner is aggrieved; and
(4) a clear and specific demand for a public hearing.

(b) The request for hearing shall be filed with: with and addressed to: State CIO, ATTENTION: ITS Hearing Officer, N.C. Office of Information Technology Services, P.O. Box 17209, Raleigh, North Carolina 27619-7209; or if sent by United States Mail, postage prepaid to State CIO, ATTENTION: ITS Hearing Officer, N.C. Office of Information Technology Services, 3700 Wake Forest Road, Suite 104, Raleigh, North Carolina, 27609; if sent by registered mail, 3900 Wake Forest Road, Suite 104, Raleigh, North Carolina, 27609; if sent by certified mail, return receipt requested.

History Note:  Authority G.S. 147-33.76(b)(1); 150B-38(a);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. _____; March 1, 2001;
09 NCAC 06B .1104 is proposed for amendment as follows:

09 NCAC 06B .1104 DEFINITIONS
The definitions contained in G.S. 150B-2 are incorporated in this Section by reference. In addition to those definitions, the following definitions apply to this Section: Subchapter:

(1) "File or filing" means to place or the placing of the paper or item to be filed into the care and custody of the hearing officer, and acceptance thereof by him, her/him. All documents filed with the hearing officer, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".

(2) "Hearing officer" means shall be the State CIO, a member of the CIO's staff appointed by the CIO or appointee under G.S. 150B-40, 150B-40 as the presiding officer, or an administrative law judge assigned under G.S. 150B-40. The phrase “a majority of the agency,” or “an agency” as specified in G.S. 150B-40 shall be interpreted in these Rules to mean the State CIO. The phrase “an agency member” or “member of an agency;” if not applicable by its terms to the State CIO shall not be applicable in these Rules.

(3) "Party" means ITS, the offeror, the agency or an intervenor who qualifies under Rule .1024 of this Section.

(4) "Service or serve" means personal delivery or, unless otherwise provided by law or rule, Rule 4 of the North Carolina Rules of Civil Procedure, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person required to be served at his or her last known address. A certificate of service by the person making the service shall be appended to every document requiring service under this Section. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service; or postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

History Note: Authority G.S. 147-33.76(b)(1); 150B-40;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. _____; March 1, 2001;
09 NCAC 06B .1105 is proposed for amendment as follows:

### 09 NCAC 06B .1105  GENERAL PROVISIONS

The following general provisions apply to this Section:

1. The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes apply in contested cases matters before the Hearing Officer hearing officer unless another specific statute or rule provides otherwise.

2. ITS may supply, at the cost for copies, forms for use in contested cases.

3. Every document filed with the hearing officer shall be signed by the author of the document, and shall contain his name, address, telephone number, and North Carolina State Bar number if the author is an attorney. An original and one copy of each document shall be filed. In any proceeding referred to the OAH pursuant to G.S. 150B-40, parties shall deliver a copy of each document filed with the OAH to the State CIO.

4. Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.

5. This Section and copies of all matters adopted by reference in this Section are available from ITS at cost.

6. The rules of statutory construction contained in Chapter 12 of the General Statutes apply in the construction of this Section. The Rules contained in this Section govern the conduct of contested case hearings under Article 3A of Chapter 150B of the General Statutes.

7. Unless otherwise provided in a specific statute, time computations in contested cases under this Section are governed by G.S. 1A-1(6), 1A-1, Rule 6.

8. If the State CIO determines that a hearing would assist him in reaching a decision, he may schedule a hearing, notwithstanding the fact that no request for a hearing has been received. In such cases the State CIO’s written documentation shall be treated as a request for hearing.

9. The hearing officer may designate an administrative law counsel as an advisor to the hearing officer during the proceedings.

**History Note:** Authority G.S. 147-33.76(b)(1); 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. _____; March 1, 2001;
09 NCAC 06B .1106 is proposed for amendment as follows:

**09 NCAC 06B .1106  ORDER FOR PREHEARING STATEMENTS**

The hearing officer may serve all parties with an order for prehearing statements together with, or after service of, the notice of hearing. Every party thus served shall, within 30 days after service, file the requested statements setting out the party's present position on the following:

1. The nature of the proceeding and the issues to be resolved;
2. A brief statement of the facts and reasons supporting the party's position on each matter in dispute;
3. A list of proposed witnesses with a brief description of his or her proposed testimony;
4. A description of what the discovery, if any, the party will seek to conduct prior to the contested case hearing and an estimate of the time needed to complete discovery;
5. Venue considerations;
6. Estimation of length of the hearing;
7. The name, address, and telephone number of the party's attorney, if any; and
8. Other special matters.

The prehearing statement shall not be used to amend the original protest or to establish jurisdiction not previously established by the protest or request for hearing.

**History Note:** Authority G.S. 147-33.76(b)(1); 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff:
09 NCAC 06B .1107 is proposed for amendment as follows:

**09 NCAC 06B .1107 DUTIES OF THE HEARING OFFICER**

(a) In conjunction with the powers in this Section, in Article 3D of Chapter 147 of the General Statutes G.S. 147, and in G.S. 150B, Article 3A the hearing officer shall perform the following duties, consistent with authority of law: law and as recommendations to the State CIO, if the hearing officer is not the State CIO:

1. Hear and rule on motions;
2. Grant or deny continuances;
3. Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
4. Examine witnesses when deemed to be necessary to make a complete record and to aid in the full development of material facts in the case;
5. Make preliminary, interlocutory, or other orders as deemed to be appropriate;
6. Recommend a summary disposition of the case or any part thereof when there is no genuine issue as to any material fact or recommend dismissal when the case or any part thereof has become moot or for other reasons; and
7. Apply sanctions in accordance with Rule .1022 .1114 of this Section. Subchapter.

(b) Recommended final agency decision. If an appointed hearing officer presides over any hearing, the hearing officer shall issue a written recommended final agency decision. The appointed hearing officer shall serve a copy of the recommended final agency decision upon all parties and the State CIO. Upon review of the recommended decision issued by the appointed hearing officer, the State CIO may adopt, modify or vacate the recommended decision and notify the parties. The State CIO shall make the final agency decision.

(c) Hearing conducted by the State CIO. In lieu of assigning a hearing officer to preside over any hearing, the State CIO may conduct the hearing. After the time for the filing of proposed findings of fact and conclusions of law by the parties expires, the State CIO shall issue a final agency decision.

(d) The recommended decision of the hearing officer, if any, and the decision of the State CIO shall be in writing and shall include findings of fact and conclusions of law. The report, decision or determination of the State CIO upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes.

**History Note:** Authority G.S. 147-33.76(b)(1); 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. ____; March 1, 2001;
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .1108 is proposed for amendment as follows:

09 NCAC 06B .1108  CONSENT ORDER; SETTLEMENT; STIPULATION
Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with the hearing officer to promote consensual disposition of the case.  Any such disposition must be approved in writing by the State CIO.

History Note:  Authority G.S. 147-33.76(b)(1); 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1109 SETTLEMENT CONFERENCE

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing. Notice of the conference may be included in the pre-hearing conference notice or in a separate written order. The purpose of a settlement conference is to:

(1) Explore any grounds upon which a contested case may be resolved without the need for a hearing; and

(2) Pursue any other matters which will reduce the cost, save time, simplify the issues to be heard, or otherwise aid in the expeditious disposition of the matters to be addressed by the hearing.

(b) Upon the request of any party, the hearing officer shall assign the case to another hearing officer appointed by the CIO under G.S. 150B-38(h) for the purpose of conducting a settlement conference. Unless the parties and the other hearing officer agree, a unilateral request for a settlement conference does not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the hearing officer. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

(c) All parties shall attend or be represented at a settlement conference. Parties or their representatives shall be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in Rule .1014 .1106 of this Subchapter.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the hearing officer presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the parties and on the hearing officer who is assigned to hear the case, and subject to final approval by the State CIO if the hearing officer is not the State CIO.

History Note: Authority G.S. 147-33.76(b)(1); 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. ; March 1, 2001;
09 NCAC 06B.1110 is proposed for amendment as follows:

**09 NCAC 06B.1110  PREHEARING CONFERENCE**

(a) The purpose of the prehearing conference is to simplify the issues to be determined; to obtain stipulations in regard to foundations for testimony or exhibits; to obtain stipulations of agreement on undisputed or other agreements, facts or the application of particular laws; to consider the proposed witnesses for each party; to identify and exchange documentary evidence intended to be introduced at the hearing; to determine deadlines dates or schedules for the completion of any discovery; to establish hearing dates and locations if not previously set; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(b) Upon the request of any party or upon the hearing officer's own motion, the hearing officer may hold a prehearing conference before a contested case hearing. The hearing officer may require the parties to file prehearing statements in accordance with Rule .1014 .1106 of this Section, Subchapter. A prehearing conference on the simplification of issues, amendments, stipulations, or other matters may be entered on the record and may be made the subject of an order by the hearing officer. Venue for purposes of a prehearing conference shall be determined in accordance with G.S. 150B-38(e).

**History Note:**  Authority G.S. 147-33.76(b)(1); 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1111 DISCOVERY

(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening, or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties shall exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

(b) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. In ruling on a motion for discovery, the hearing officer shall recognize all privileges recognized at law.

(c) When a party serves another party with a request for discovery, that request need not be filed with the hearing officer but shall be served upon all parties.

(d) The parties shall immediately commence to exchange information voluntarily, to seek access as provided by law to public documents, and to exhaust other informal means of obtaining discoverable material.

(e) Unless otherwise ordered, all discovery shall be completed no later than the first day of the hearing. The hearing officer may shorten or lengthen the period for discovery and adjust hearing dates accordingly and, where necessary for a fair and impartial hearing, allow discovery during the pendency of the hearing.

(f) Unless otherwise ordered, no later than 15 days after receipt of a notice requesting discovery, the receiving party shall:
   1. Move for relief from the request;
   2. Provide the requested information, material or access; or
   3. Offer a schedule for reasonable compliance with the request.

(g) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to this Rule shall be as provided for by G.S. 1A-1(37), to the extent that a hearing officer may impose such sanctions, and Rule 1022 of this Subchapter.

History Note: Authority G.S. 147-33.76(b)(1); 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1112 CONSOLIDATION OF CASES

(a) The hearing officer may order a joint hearing of any matters at issue in contested cases involving common questions of law or fact or multiple proceedings involving the same or related parties, or may order the cases consolidated or make other orders to reduce costs or delay in the proceedings.

(b) A party requesting consolidation shall serve a petition motion for consolidation on all parties to the cases to be consolidated and shall file the original with the hearing officer, together with a certificate of service showing service on all parties as herein required. Any party objecting to the petition motion shall serve and file his its objections within 10 five days after service of the petition for consolidation.

(c) Upon determining whether cases should shall be consolidated, the hearing officer shall serve a written order on all parties that contains a description of the cases for consolidation and the reasons for the decision.

(d) Nothing contained in this Rule prohibits the parties from stipulating and agreeing to a consolidation, which shall be granted upon submittal of a written stipulation, signed by every party, to the hearing officer.

(e) Following receipt of a notice of or order for consolidation, any party may petition move for severance by serving it a motion on all other parties and filing it with the hearing officer at least seven days before the first scheduled hearing date. If the hearing officer finds that the consolidation will prejudice any party, he shall order the severance or other relief that will prevent the prejudice from occurring.

History Note: Authority G.S. 147-33.76(b)(1); 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1114 SANCTIONS

(a) If a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may:

1. Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed to be proved without further evidence;
2. Dismiss or grant the motion or petition;
3. Suppress a claim or defense; or
4. Exclude evidence.

(b) In the event that any party, attorney at law, or other representative of a party fails to comply with a subpoena, engages in behavior that obstructs the orderly conduct of proceedings, or would constitute contempt if done in the General Court of Justice, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

(c) If a witness fails to comply with a subpoena, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

History Note: Authority G.S. 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1115 is proposed for amendment as follows:

09 NCAC 06B .1115  MOTIONS

(a) Any application to the hearing officer for an order shall be by motion, which shall be in writing unless made during a hearing, and must be filed and served upon all parties not less than 10 days before the hearing, if any, is to be held either on the motion or the merits of the case. The nonmoving party has 10 days after the date of service of the motion to file a response, which must be in writing. Motions practice in contested cases before the hearing officer pursuant to G.S. 150B-3A are governed by Rule 6 of the General Rules of Practice for the Superior and District Court.

(b) If any party desires a hearing on the motion, he shall make a request for a hearing at the time of the filing of his motion or response. A response shall set forth the nonmoving party's objections. All motions in writing shall be decided without oral argument unless an oral argument is directed by the hearing officer. When oral argument is directed by the hearing officer, a motion shall be considered submitted for disposition at the close of the argument. A hearing on a motion shall be directed by the hearing officer only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of a hearing, shall be in writing and shall be served upon all parties of record not less than five days before a hearing, if any, is held.

(a) Any party may file any motion which would be permitted under the Rules of Civil Procedure as though the contested case was a matter pending in a civil trial court. Motions practice in contested cases before the hearings officer pursuant to G.S. 150B, Article 3A, shall be governed by Rule 6 of the Rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts of North Carolina.

(b) The opposing party may file such response as is permitted by the Rules of Civil Procedure to any such motion within the time permitted by the Rules of Civil Procedure.

(c) The hearing officer shall rule on any correctly filed motion. The hearing officer may rule on any motion with or without oral argument. The hearing officer shall notify the parties of the location, date, and time for oral argument if, in the hearing officer's discretion, oral argument is necessary for a full and complete record. The notice shall indicate whether the argument is to be conducted in person or by conference call.

History Note:  Authority G.S. 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .1117 is proposed for amendment as follows:

09 NCAC 06B .1117 CONTINUANCES

(a) As used in this Rule, "good cause" includes death or incapacitating illness of a party, representative, or attorney of a party, a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the hearing officer have agreed to a new hearing date or the parties have agreed to a settlement of the case that had been or is likely to be approved by the final decision maker, hearing officer.

(b) As used in this Rule, "good cause" does not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged; unavailability of a witness if the witness' testimony can be taken by deposition; or failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(c) A request for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to the hearing officer and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days before a hearing shall be denied unless the reason for the request could not have been ascertained earlier.

(d) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing officer shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient.

(e) A continuance shall not be granted if granting it would prevent the case from being concluded within any statutory or regulatory deadline.

History Note: Authority G.S. 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1118 is proposed for amendment as follows:

09 NCAC 06B .1118 RIGHTS AND RESPONSIBILITIES OF PARTIES

(a) A party has the right to present evidence, rebuttal testimony, and argument with respect to the issues of fact, law and policy; and to cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the Department agency and offered in evidence.

(b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their needs become evident to the requesting party. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the hearing officer or agreed upon at a prehearing conference.

(c) The hearing officer shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the hearing officer shall simultaneously send a copy to all other parties.

(d) All parties have the continuing responsibility to notify the hearing officer of their current addresses and telephone numbers.

(e) A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(f) With the approval of the hearing officer, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the hearing officer.

(g) Before issuing a recommended decision, the hearing officer may order any party to submit proposed findings of fact and written arguments. Before issuing a final decision in a contested case which has been assigned by the State CIO to a person other than the State CIO as described in G.S. 150B-40(e) and these Rules, the hearing officer shall order any party to submit proposed findings of fact and written arguments.

09 NCAC 06A 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .1120 is proposed for amendment as follows:

09 NCAC 06B .1120 EVIDENCE

(a) The North Carolina Rules of Evidence as found in G.S. N.C.G.S. Chapter 8C govern in all contested case proceedings, except as provided otherwise in this Section Subchapter and G.S. 150B-41.

(b) The hearing officer may shall admit all evidence that has probative value. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The hearing officer may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will require undue consumption of time or create substantial danger of undue prejudice or confusion.

(c) Contemporaneous objections by a party or a party's attorney are not required in the course of a hearing to preserve the right to object to the consideration of evidence by the hearing officer in reaching a decision or by the court upon judicial review.

(d) All evidence to be considered in the case, including all records and documents or true and accurate photocopies thereof, shall be offered and made a part of the record in the case. Except as provided in Paragraph (f) of this Rule, factual information or evidence that is not offered shall not be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the materials so incorporated are available for examination by the parties.

(e) Documentary evidence in the form of copies or excerpts may be received in the discretion of the hearing officer or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised about the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy instead of the original.

(f) The hearing officer may take notice of judicially cognizable facts by entering a statement of the noticed fact and its source into the record. Upon a timely request, any party shall be given the opportunity to contest the facts so noticed through submission of evidence and argument.

(f) The hearing officer shall take official notice of standards and policies that have been established by ITS pursuant to Article 3D of Chapter 147 of the General Statutes. The hearing officer may take official notice of additional facts or documents as requested by a party or within the specialized knowledge of the hearing officer by entering a statement of the noticed fact or document and its source into the record. Upon a timely request, any party shall be given the opportunity to contest such additional facts or documents so noticed through submission of evidence and argument.

(g) A party may call an adverse party, or an officer, director, managing agent, or employee of the state or any local government, of a public or private corporation, or of a partnership or association or body politic that is an adverse party, and may interrogate that party by leading questions and may contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

(g) When the State CIO takes official notice of evidence not in the record when making a final decision, the parties shall be afforded notice and a hearing to present arguments against the consideration of such evidence before a final decision is made.
09 NCAC 06B .1121 is proposed for amendment as follows:

09 NCAC 06B .1121 FINAL AGENCY DECISION; OFFICIAL RECORD

(a) A copy of any decision or order shall be served as in the manner provided by G.S. 150B-42(a). The cost of the service, fees, and expenses for any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314.

(b) The official record of a contested case is available for public inspection at reasonable times and under reasonable supervision except for those portions, if any, that the hearing officer has, consistent with law, ordered sealed.

(c) The hearing officer may, consistent with law, order part or all of an official record sealed.

(d) The official record shall be prepared in accordance with G.S. 150B-42.

(e) Contested case hearings shall be recorded either by a recording system or a professional court reporter using stenomask or stenotype.

(f) Transcript costs and other copying costs incurred by ITS shall be charged to or apportioned equally among the party or parties requesting a transcript, transcript or copies of other records.

(g) Any other costs incurred by ITS when using a professional court reporter and other copying costs shall be charged to or apportioned equally among the requesting party or parties.

(h) A 24-hour hearing cancellation notice is required in all cases. The party or parties responsible for the cancellation shall be liable for any cancellation fees.

(i) Transcripts of proceedings during which oral evidence is presented shall be made only upon request of a party. Transcript costs shall include the cost of an original for ITS. An attorney requesting a transcript on behalf of a party is a guarantor of payment of the cost. Cost shall be determined under supervision of the hearing officer who, in cases deemed to be appropriate by him, who may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party that submitted it.

(j) Copies of tapes or other transcript media used (e.g., CDs) are available upon written request at a cost of five dollars ($5.00) per tape, tape or CD.

(k) Copies of ITS hearing tapes audio recordings, or Non-ITS non-ITS certified transcripts from those tapes audio recordings are not part of the official record.

History Note: Authority G.S. 150B-38(h);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. _____; March 1, 2001;
09 NCAC 06B .1201 is proposed for adoption as follows:

09 NCAC 06B .1201 DEclaratory Rulings

(a) Any request for a determination regarding the application of an ITS rule, statute or standard established by the State CIO to a specific factual situation must be directed to the State CIO. The request for a ruling will follow the Rules of this Section and applicable statutes. A declaratory ruling proceeding may include written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request.

(b) Declaratory rulings pursuant to G.S. 150B-4 shall be issued by the State CIO only on the validity of an ITS rule or standard or on the applicability of a rule or order of the State CIO to stipulated facts. A declaratory ruling shall not be issued on a matter requiring an evidentiary proceeding.

(c) As used in this Section, “Standard” shall refer to and include such standards, policies and procedures adopted by the State CIO pursuant to authority found in Article 3D of Chapter 147 of the N.C. General Statutes.

(d) The petitioner must possess such an interest in the question to be ruled on that the petitioner’s need to have such a ruling in order to comply with statutory requirements, ITS rules, or departmental policy shall be apparent from the petition and shall be explained therein.

History Note: Authority G.S. 147, Article 3D; 150B, Article 4;

Eff.
09 NCAC 06B.1202 REQUESTS FOR DECLARATORY RULINGS

(a) Requests shall be in writing and dated and verified by the person submitting the same.

(b) The request shall contain:

(1) The petitioner’s name, address and telephone number;

(2) The rule or statute, or both, referred to;

(3) A statement of facts supporting the petitioner’s request for a declaratory ruling;

(4) The petitioner’s option, a statement of any legal authorities, in support of the interpretation given the statute or rule by the petitioner;

(5) A concise statement of the manner in which the petitioner is aggrieved by the rule, statute, or standard, or its potential application to the petitioner;

(6) A statement of the practices or procedures likely to be affected by the requested declaratory ruling and the persons likely to be affected by the ruling.

(7) A draft of the declaratory ruling sought by the petitioner, if a specified outcome is sought by the petitioner; and

(8) A statement of whether the petitioner desires to present oral argument.

History Note: Authority G.S. 150B-104; Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .1203 is proposed for adoption as follows:

09 NCAC 06B .1203 RESPONSE TO A REQUEST FOR A DECLARATORY RULING

(a) The State CIO shall consider the request within 30 days of receipt. The State CIO shall issue a ruling except:

(1) When the State CIO finds that the person making the request is not a “person aggrieved,” as defined in G.S. 150B-2(6);

(2) When the State CIO finds, in a request concerning the validity of a rule, that the rulemaking record shows that the agency considered all factors identified by the petitioner as specific or relevant when the rule in question was adopted;

(3) When the State CIO finds that the person requesting the ruling is not directly or indirectly affected substantially in his person, property, or public office or employment by the rule, statute, or order of the department which is the subject of the request;

(4) When the petition does not state with enough specificity the factual situation involved, or the question is presented in such a manner that the State CIO cannot determine what the question is, or that the State CIO cannot respond with a specific ruling that will be binding on all parties;

(5) When the State CIO has made a determination in a similar contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or

(6) Where the subject matter of the request is involved in pending litigation or contested case in any state or federal court in North Carolina.

(b) The State CIO shall, not later than the 60th day after receiving such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. The State CIO may rule at any meeting convened to consider the request, or defer the ruling until a later date, but not later than the 60th day after the request for a ruling is received. The State CIO may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in any notice given to the requesting party.

(c) Whenever the State CIO believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the State CIO shall notify the petitioner of his decision in writing, stating reasons for the denial of a declaratory ruling.

(d) The State CIO shall consider a request to make a declaratory ruling on the validity of a rule only when the petitioner shows that circumstances are so changed since adoption of the rule that such a ruling would be warranted, or that the rulemaking record for the rule evidences a failure by the agency to consider facts presented in the petition at the time of adoption of the rule. The petitioner shall state in his request the consequences of a failure to issue a ruling.

History Note: Authority G.S. 150B-4;
Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

09 NCAC 06B .1204 is proposed for adoption as follows:

**09 NCAC 06B .1204 EFFECT OF A DECLARATORY RULING**

For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

1. The statute or rule interpreted by the declaratory ruling is amended, altered, or repealed;
2. The State CIO changes the declaratory ruling prospectively for good reasons;
3. Any court sets aside the ruling; or
4. Any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

*History Note:* Authority G.S. 150B-4:

*Eff.*
09 NCAC 06B.1205 is proposed for adoption as follows:

**09 NCAC 06B.1205 RECORD OF RULING**

A record of all declaratory rule making proceedings shall be maintained at the State CIO’s office and shall be available for public inspection during regular office hours.

*History Note: Authority G.S. 150B-4; Eff.*
**09 NCAC 06B 1206 DEFAULT PROCEEDINGS; DISQUALIFICATION; AND DEBARMENT**

(a) **DISQUALIFICATION:**

The purchasing agency that issued the solicitation document resulting in the contract may find a contractor vendor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor vendor is found in default of contract, the purchasing agency that issued the solicitation document resulting in the contract may take action, immediate if necessary, to purchase the needed goods or services on the open market and charge any additional cost for the goods or services and expense for doing so to the defaulting contractor vendor. If an agency other than ITS finds a contractor vendor in default, such action and the circumstances shall be reported by the agency to ITS in writing. This does not limit any other remedies that may be available to the state or agency.

(b) **DEBARMENT:**

ITS may remove the contractor vendor from any distribution lists that may be utilized. ITS may debar the contractor vendor for cause from doing IT procurements contracting with the state for a period of not to exceed one year.

(c) **NOTICE:**

ITS shall notify any contractor vendor of the disqualification or debarment action in writing.

**History Note:**  Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff
09 NCAC 06B .1207 is proposed for amendment as follows:

09 NCAC 06B .1207    FAITHFUL PERFORMANCE

To ensure a vendor’s faithful performance, a purchasing agency’s contract may include such conditions and terms as:

(1) A bond, or other means of ensuring faithful performance, similar assurance, may be required of the contractor vendor at the contractor’s vendor’s expense.

(2) Liquidated damages may be provided for in the contract, as a means of ensuring faithful performance from the contractor.

(3) The agency may hold as a retainage a percentage of the contract value to be remitted upon final acceptance by the agency.

(4) The agency may withhold final payment contingent on acceptance of the final deliverable.

History Note: Authority G.S. 147-33.103(b); 147-33.72C; 147-33.76(b)(1).
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
SECTION .1300 EXEMPTIONS, EMERGENCIES, AND SPECIAL DELEGATIONS

09 NCAC 06B .1301 is proposed for amendment as follows:

09 NCAC 06B .1301  EXEMPTIONS

(a) It is not mandatory for items listed in this Rule to be purchased through the ITS procurement office. The following are exemptions to ITS review and approval for purchases that exceed an agency’s delegated authority.

1. Packaged copyrighted software products;
2. Services provided by individuals through direct employment contracts with the state;
3. Services non-severable services that are merely incidental to the purchase of supplies, materials, or equipment such as installation services;
4. Personal services provided by a professional individual (person) on a temporary or occasional basis;
5. 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
6. Information technology subscriptions for printed materials or online services.

(b) In addition to products and services noted in Paragraph (a) of this Rule, the State CIO or his designee may exempt other products and services from purchase through ITS provided that the State CIO or his designee determines that no price or quality advantage would be gained by handling a particular acquisition through ITS.

(c) As used in this Rule, direct employment contract means an agreement for services under (a) made by the person and an agency of the State.

History Note:  Authority G.S. 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff
09 NCAC 06B .1302 is proposed for amendment as follows:

**EMERGENCIES EMERGENCY SITUATIONS OR PRESSING NEED**

(a) An agency may make purchases of goods or services in the open market in cases of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work. Emergencies are defined as situations that endanger lives, property or the continuation of a vital program, as determined by the agency executive officer, and that can be rectified only by immediate, on-the-spot purchases or rental of goods or services.

(b) Agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language terms and conditions issued by ITS, unless circumstances prohibit their use.

(c) When emergency or pressing need action is necessary, and the estimated expenditure is over the purchasing agency’s delegation, prior verbal approval shall be obtained from ITS if time permits. Subsequently, whether or not such prior approval was possible, if the expenditure is over the purchasing agency’s delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to ITS. ITS shall report such purchases of goods that exceed the benchmark in 09 NCAC 06A .0103 to the Board of Awards as a matter of record.

**History Note:**  Authority G.S. 143-52.1; 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1303 is proposed for amendment as follows:

09 NCAC 06B .1303 SPECIAL DELEGATIONS

(a) The State CIO or his designee may authorize, by special delegation, any agency to purchase specific goods or services even if the expenditure exceeds the benchmark. Such delegation is normally confined, but not limited, to goods or services which by their nature or circumstance, such as perishableness, transportation costs, market volatility, local conditions or local availability, would result in handling by ITS serving no practical purpose. may approve an increase in an agency’s general delegation. The resulting delegation shall be a special delegation. Every such delegation shall be in writing and made a matter of record.

(b) The State CIO or his designee may require that offers received an award recommendation under such delegations be sent to ITS for review of the purchasing agency’s determination of the successful vendor.

(c) ITS shall periodically review its special delegations of purchase to ascertain the availability of these goods or services and their continued suitability for delegation.

History Note: Authority G.S. 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1304 is proposed for amendment as follows:

**09 NCAC 06B .1304  GENERAL DELEGATIONS**

The general purchasing delegation for agencies the purchasing agency shall be not more than twenty-five thousand dollars ($25,000) unless specific authorization is given by the CPO State CIO. The CPO State CIO may lower or raise this general delegation for a specific agency, up to the benchmark established by the CIO under Rule 09 NCAC 06A .0103 upon consideration of the agency's overall capabilities, including staff resources, organizational structure, training, purchasing compliance reviews, electronic communication capabilities, and audit reports. If an agency wishes to obtain an increase in its general delegation, it shall submit a request in writing, outlining its overall capabilities, to the CPO State CIO for the CPO’s State CIO’s consideration.

**History Note:  Authority G.S. 147-33.103(b); 147-33.76(b)(1);**

Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. _____; March 1, 2001;
09 NCAC 06B .1305 is proposed for amendment as follows:

09 NCAC 06B .1305  COMPLIANCE REVIEWS

(a) ITS shall be responsible for may conduct compliance reviews on purchasing practices at all agencies. any purchasing agencies. The purpose of the compliance review shall be for determining if an agency is complying with ITS' purchasing statutes and rules adopted thereunder, and whether it should continue having the same level of delegation, have it reduced, or if it qualifies for an increase. rules. A copy of the compliance report shall be provided to the agency's executive officer, agency head, the State Auditor, and the State Budget Officer.

(b) ITS staff may enter the purchasing agency's premises and obtain its purchasing records for the purpose of the compliance review. The purchasing agency shall cooperate with ITS staff, providing them with requested records, adequate office space for conducting the review and agency purchasing staff for discussion of purchase transactions. ITS shall not unnecessarily require of the agency any more than is needed to complete the review.

(c) The State CIO may lower, or raise if requested, an agency's general delegation if the results of a compliance review by the compliance staff of ITS merit such action as determined by the State CIO. The State CIO may lower the delegation to any level, including the complete removal of the delegation, depending on the nature of any violations found.

(d) The State CIO or his designee shall provide to each agency, upon request, ITS' assistance in educational training for the agency's staff to better acquaint them with ITS' purchasing statutes and rules.

History Note:  Authority G.S. 147-33.103(b); 147-33.76(b)(1);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06A and 06B Fiscal Impact Statement
Office of Information Technology Services, November 2012

SECTION .1400 - RECORDS

09 NCAC 06B .1401 is proposed for amendment as follows:

09 NCAC 06B .1401  RECORD MAINTENANCE
Except where state law provides to the contrary, after the award of a contract, the purchasing records of an agency are public documents, and these documents shall be maintained for a period of five years after the expiration date of the contract. Record retention shall be in accordance with G.S. 121-5.

History Note:  Authority G.S. 147-33.76(b1); 147-33.76(b)(1):
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff.
09 NCAC 06B .1402 is proposed for amendment as follows:

09 NCAC 06B .1402 PROCUREMENT FILE RECORDS

(a) The purchasing agency or ITS shall identify each paper or electronic contract record individually so it can be readily located and referenced.

(b) The purchasing agency or ITS shall document all purchase transactions. As applicable, each paper or electronic record procurement file shall include: the following records:

1. Requisition;
2. Required approval to proceed with acquisition;
3. Each Original offer if in writing, or written documentation of verbal offers received;
4. Selection justification or reason for cancellation; Documentation supporting whether each offeror is responsive and responsible to terms of the solicitation, the use of a competitive range selection and rejection of offerors for negotiations, best and final offers (BAFO), award, or cancellation or other disposition of the solicitation as may be applicable;
5. Worksheets/evaluations of individual offers;
6. Distribution list, if used; Vendor distribution list or proof of fulfilling advertisement requirement;
7. Written justification for limitation or waiver of competition, or emergency purchase, or waiver of any rule during the solicitation process;
8. Tabulation of offers received;
9. Copy of purchase order(s) or certification to agency authorizing placing of order; ITS approval of award recommendation;
10. Purchase order or other payment verification;
11. Related correspondence;
12. Reason(s) for receiving only one offer in response to a solicitation;
13. Summary of vendor debriefing, if any;
14. Negotiated contracts;
15. Signed contracts or agency acceptance of offer(s);
16. Reasons for not accepting technical proposals; and
17. Board of Awards decision records; and
18. Protest documents.

(c) After award of contract, all material in the contract, procurement file, except confidential non-public information, shall be open to interested persons during normal office hours, may be hand copied, or copies shall be furnished made available for inspection in accordance with the Public Records Act, G.S. 132-1 et seq.

History Note: Authority G.S. 147-33.103(b);
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
09 NCAC 06A and 06B Fiscal Impact Statement
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Amended Eff.