

## **SUBCHAPTER 06A – INFORMATION TECHNOLOGY PROCUREMENT**

### **SECTION .0100 – FORMS, TERMS AND CONDITIONS AND DEFINITIONS**

This Chapter was transferred and recodified from 4 NCAC 21 effective September 1, 2000. [S.L. 2000-174]

#### **09 NCAC 06A .0101 FORMS, TERMS AND CONDITIONS**

In these Rules the State Chief Information Officer (State CIO) shall prescribe forms, terms and conditions and advertisement requirements for acquiring goods and services related to information technology (IT) for use by purchasing 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(b1); 147-33.77(f); 147-33.82; 147-33.95(f);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*

#### **09 NCAC 06A .0102 DEFINITIONS**

For the purpose of this Chapter,

- (1) "Agency/Agencies" is defined as an entity enumerated in G.S. 147-33.81(6).
- (2) "Best value procurement" is defined as a procurement process with the objective of reducing the total cost of ownership. The particular procurement methods used are selected so as to result in the best value for the State in terms of the function to be performed or delivered. Competitive best value procurement allows for the use of alternate competitive purchasing techniques in addition to low price analysis in the selection of supply sources.
- (3) "Clarification" is defined as communication between the State and an offeror that may occur after receipt of an offer 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. Clarification shall not be used to cure material deficiencies or to negotiate.
- (4) "Commodity" is defined as tangible or moveable goods, equipment, materials or supplies.
- (5) "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.
- (6) "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 purchasing agency during evaluation of offers.
- (7) "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.
- (8) "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.
- (9) "General delegation" is defined as the authority delegated to the purchasing agency for the procurement of information technology goods and services. The State CIO may issue general delegations and special delegations as provided in Rules 06B .1303 and 06B .1304. Information technology is defined in G.S. 147-33.81(2).
- (10) "Goods" are defined as information technology commodities including equipment, materials, or supplies.
- (11) "Negotiation" is defined as oral or written communications in a waived, limited, or open competitive procurement between the State and offeror(s) undertaken with the intent of allowing offerors to revise their offers. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed contract. Negotiations are specific to each offer and shall be conducted to maximize the State's ability to obtain best value based on the evaluation factors set

forth in the solicitation. The State may reward technical solutions exceeding mandatory minimums with higher evaluations or negotiate with offerors for increased performance beyond mandatory minimums.

- (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.
- (13) "Packaged software," or "commercial off the shelf software" (COTS) is an information technology commodity and is defined as software used regularly for other than government purposes and is sold, licensed, or leased to the general public or commercial enterprises at a vendor's catalog prices.
- (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.
- (15) "Price" is defined as the amount paid by the State to a vendor for a good or service.
- (16) "Procurement" is defined as the process of acquiring goods or services.
- (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.
- (18) "Purchasing agency," or purchaser, is defined as the agency that issues the purchase order and thereby awards a contract.
- (19) "Responsible offeror" is defined as an offeror who demonstrates in its offer that it has the capability to perform fully the requirements of the solicitation.
- (20) "Responsive offer" is defined as an offer that conforms to the solicitation in all material respects.
- (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.
- (22) "Service" is defined as any 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. This includes 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.
- (24) "Solicitation document" is defined as a written or electronic Invitation for Bid (IFB), Request for Quote (RFQ), Request for Proposal (RFP) or Request for Information (RFI) document or other such documents approved under Rule 06B .0201 expressly used to solicit, invite offers, or request information regarding the acquisition of goods and services.
- (25) "State Chief Information Officer" (State CIO) is the person appointed to manage and administer the Office of Information Technology Services (ITS), 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 good or a service.
- (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; 147-33.76(b1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.

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

*History Note:* Authority G.S. 143-52.1; 147-33.76(b1); 147-33.101(a);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000;  
Amended Eff. September 1, 2013; March 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule Expired May 1, 2015.

**09 NCAC 06A .0104 RIGHT TO PETITION**

(a) Any person submitting a petition requesting the adoption, amendment, or repeal of a rule under this Chapter shall address the petition to the Rules Coordinator, Attn: DIT Legal Services, Mail Service Center 4101, Raleigh, North Carolina 27699-4101. Alternatively, a petition can also be emailed to DITrulesrequests@nc.gov.

(b) For petitions to adopt or amend a rule, the petition shall contain the following:

- (1) a draft of the proposed rule or amendment;
- (2) a statement of the effect of the requested rule change; and
- (3) the name and address of the petitioner.

(c) The petition may also contain the following:

- (1) the reason for the proposal;
- (2) the effect of the new rule on existing rules; or
- (3) any data supporting the rule proposal.

*History Note:* Authority G.S. 143B-1321(a)(16); 116E-4(b);  
Eff. January 1, 2021.