

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 receives prior approval to negotiate from the State CIO as permitted by these Rules. Prior approval may be granted upon finding that the capabilities and subject matter knowledge of the agency, availability of knowledgeable personnel within the agency or DIT, use of non-state personnel, and costs of engaging additional resources demonstrate that the agency's negotiation will be more responsive, efficient, and cost-effective consistent with the requirements of best value procurement.

(b) If a purchasing agency deems negotiations to be advantageous to the State after receiving offers and then determines 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 negotiation documentation shall include identification of issues or subjects of negotiation, the agency's risk assessment therefor, trade off principles as permitted by G.S. 143-135.9, and other matters directly arising from the solicitation or offer. Negotiations shall be finalized in writing and shall include standard solicitation document language and terms and conditions issued by DIT, or such terms as may be established pursuant to Paragraphs (c) or (d) of this Rule. 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 the State CIO, made in the course of negotiations must be accompanied by:

- (1) Approval of the negotiating agency;
- (2) Requested approval from DIT;
- (3) Appropriate evaluation documentation reflecting trade-offs between price and non-price factors; and
- (4) Such other documentation as the State CIO may require to conform with Rule .1402 of this Subchapter.

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

*History Note: Authority G.S. 143B-1322(c); 143B-1340(f); 143B-1343; 143B-1350;
Eff. September 1, 2013;
Readopted Eff. March 1, 2016.*