

## CHAPTER 30 - STATE CONSTRUCTION

### SUBCHAPTER 30A - DIVISION OF STATE CONSTRUCTION

#### SECTION .0100 - GENERAL PROVISIONS

##### **01 NCAC 30A .0101 SCOPE**

The regulations and policies set forth in this Chapter shall apply to the construction, renovation or alteration of all physical properties owned by the State of North Carolina through the various state institutions, departments or agencies which are subject to provisions of the Executive Budget Act, including land and improvements, but excluding public highways, bridges and railroads.

*History Note:* Authority G.S. 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

##### **01 NCAC 30A .0102 LOCATION AND HOURS OF OPERATION**

##### **01 NCAC 30A .0103 ORGANIZATION**

*History Note:* Authority G.S. 143-341(3); 143B-10; 143B-370;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

##### **01 NCAC 30A .0104 DECLARATORY RULING**

Any request for a determination regarding the application of any division rule to a specific factual situation will be directed to the Director of the Division of State Construction. The request for a ruling will follow the rules of the Department of Administration, Title 1 of the North Carolina Administrative Code.

*History Note:* Authority 143B-10; 150B-4;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

##### **01 NCAC 30A .0105 DESCRIPTION OF FORMS**

##### **01 NCAC 30A .0106 INFLATION POLICY**

*History Note:* Authority G.S. 143-341(3); 143B-10; 143B-370;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

#### SECTION .0200 - CONTRACTS AND BUDGET CONTROL OFFICE

##### **01 NCAC 30A .0201 RESPONSIBILITIES**

The contracts and budget control office of the division of state construction shall be responsible for assisting agencies with advance planning of capital improvements projects, budget preparation, negotiation and preparation of design contracts; and after bids are received, making notification of award of construction contracts. Further responsibilities are carried out by this office at the direction of the Director of the Division of State Construction.

*History Note:* Authority G.S. 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

##### **01 NCAC 30A .0202 ADVANCE PHYSICAL PLANNING**

##### **01 NCAC 30A .0203 PRELIMINARY DESIGN**

## **01 NCAC 30A .0204 COMMENCEMENT OF DESIGN WORK**

*History Note:* Authority G.S. 143-31.1; 143-341(3); 143-370; 143B-10; Chapter 129, Article 7;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

## **01 NCAC 30A .0205 FORM OF REQUESTS**

Institutions and agencies planning to request appropriations for capital improvements shall use Form OC-25, "Proposed Capital Improvement Project," and forward a copy of each request to the division of state construction for verification of cost estimation. This form, when completed, shall fully describe the proposed project and justification therefor. Each form must be approved by the requesting board or agency. After verification, these forms are then returned to the agency.

*History Note:* Authority G.S. 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **01 NCAC 30A .0206 PREPARATION OF DESIGN CONTRACT**

Preparation of design contracts is a function of the division of state construction which will furnish advice and assistance to the institution, department or agency in selection of designers, if requested. Design contracts will not be prepared for any project for which funds are not available. Agencies subject to G.S. 143-135.25 will follow the procedures established by the State Building Commission.

*History Note:* Authority G.S. 143-128; 143B-10; 143-135.25; 143-135.26;  
Eff. February 27, 1979;  
Amended Eff. July 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **01 NCAC 30A .0207 DESCRIPTION OF DESIGN CONTRACT**

All contracts for design shall be executed on Form OC-22. Form OC-22 represents an agreement between an owner and a designer for the purpose of establishing the terms under which the designer will furnish to the owner plans and specifications for a capital improvement project. Information contained in this document also contains provisions for discontinuance in the event that the project is terminated or expanded for any reason, as well as detailing the responsibilities of both the owner and the designer.

*History Note:* Authority G.S. 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **01 NCAC 30A .0208 PLANNING PROCEDURES**

*History Note:* Authority G.S. 143-31.1; 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Expired Eff. August 1, 2018 pursuant to G.S. 150B-21.3A.

## **01 NCAC 30A .0209 CONTRACT CONDITIONS**

*History Note:* Authority G.S. 143-31.1; 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

## **01 NCAC 30A .0210 IMPLEMENT LIFE CYCLE COST: ENERGY CONSUMPTION ANALYSIS**

Form OC-20, "Implementation of Life Cycle Cost and Energy Consumption Analysis," becomes a part of the design contract, when applicable, in accordance with North Carolina General Statutes 143-64.10 to 143-64.14, and details procedures to be followed for implementation of life cycle cost and energy consumption analysis.

*History Note:* Authority G.S. 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30A .0211 DESIGN FEES**  
**01 NCAC 30A .0212 AWARD OF CONSTRUCTION CONTRACTS**

*History Note:* Authority G.S. 143-31.1; 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

**SECTION .0300 - ARCHITECTURAL/ENGINEERING REVIEW OFFICE**

**01 NCAC 30A .0301 RESPONSIBILITIES**

Responsibilities of this office include review of all plans and specifications received from designers or consultants and state agencies for capital improvement projects; consultation and coordination of reviews with other agencies; coordination, communication and assistance with other offices in the division of state construction; and providing consulting assistance to state agencies.

*History Note:* Authority G.S. 143-135.26; 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30A .0302 REVIEW**  
**01 NCAC 30A .0303 PLANNING CONFERENCE**  
**01 NCAC 30A .0304 SEALS**

*History Note:* Authority G.S. 133-1.1; 143-31.1; 143-341(3); 143B-10; Chapter 83; Chapter 89;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

**01 NCAC 30A .0305 ADVERTISING FOR BIDS**

- (a) No projects will be advertised for bids until cost estimates, assuring that the project is within budgeted funds or funds to be made available to the project, have been received from the designer.
- (b) The form of advertisement shall be prepared by the designer and published in one issue of a daily newspaper having general circulation in the State of North Carolina. Payment for advertisement shall be by owner. A minimum of seven days shall be observed from publication to actual bid opening.
- (c) Full project information shall be furnished by the designer to appropriate trade organizations for publication in their bulletins.

Plans and specifications shall be provided to plan rooms of recognized construction trade organizations in the area.

*History Note:* Authority G.S. 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30A .0306 BIDDING DOCUMENTS**

All contractors who desire to bid shall be furnished plans, specifications and all other data, upon payment of a plan deposit, when required, for use in making estimates in ample time for bidding purposes.

*History Note:* Authority G.S. 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30A .0307 RECEIPT OF BIDS**

(a) Bids shall be received in strict accordance with requirements of the General Statutes of North Carolina and the "Instructions to Bidders and General Conditions of the Contract" (Form OC-15). Bid security or a bid bond shall be required as prescribed by statute. The designer shall include in the documents the bid bond Form (OC-12) following the form of proposal (OC-7).

(b) The division requests all bidders to include with their bids a properly executed statement as follows: "The undersigned bidder hereby certifies that he is not knowingly in violation of the wage and price guidelines issued by the President's Council on Wage and Price Stability."

(c) The division will consider bidders' compliance with the wage and price standards as determined by the President's Council on Wage and Price Stability in determining award of contract in the event of tie bids.

*History Note:* Authority G.S. 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

<b>01 NCAC 30A .0308</b>	<b>CLOSE OF BIDDING</b>
<b>01 NCAC 30A .0309</b>	<b>CHANGE OF WITHDRAWAL OF BID</b>
<b>01 NCAC 30A .0310</b>	<b>OPENING OF BIDS</b>
<b>01 NCAC 30A .0311</b>	<b>AWARD OF CONSTRUCTION CONTRACTS</b>
<b>01 NCAC 30A .0312</b>	<b>ENERGY MANAGEMENT SECTION</b>
<b>01 NCAC 30A .0313</b>	<b>ENERGY ACCOUNTING</b>
<b>01 NCAC 30A .0314</b>	<b>STATE GOVERNMENT ENERGY SURVEY</b>

*History Note:* Authority G.S. 113-7; 143-31.1; 143-64.10 through 143-64.14; 143-129.1; 143-340(10),(12); 143-341(3); 143B-10; N.C. Energy Policy Council Energy Conservation Plan, III, Sector Analyses and Recommendations, State and Local Government, (b) Buildings and Grounds; P.L. 94-163 and N.C. Energy Conservation Plan Grant Agreement Dated 6/20/77, Part III, Between the Energy Division, N.C. Department of Commerce and N.C. Department of Administration;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

**SECTION .0400 - CONSTRUCTION ADMINISTRATION OFFICE**

**01 NCAC 30A .0401 RESPONSIBILITIES**

Responsibilities of this office include overseeing the construction of all capital improvement projects for the state, maintaining construction schedules and performing final and follow-up inspections.

*History Note:* Authority G.S. 143-341(3); 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30A .0402 CONSTRUCTION PHASE**

*History Note:* Authority G.S. 133-1.1; 143-341; 143B-10;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

## **01 NCAC 30A .0403 DESIGNER'S RESPONSIBILITIES**

The designer's responsibilities during the construction phase shall be as described in the Planning Procedures (OC-18), the General Conditions and the State Construction Manual. The designer's responsibilities shall include the following:

- (1) Pre-construction Conference. The designer shall arrange for and give written notice to all contractors, the owner and the division of state construction as to a time and place of the pre-construction conference. The purpose of this meeting is to review all requirements of the division of state construction and to coordinate activities for all construction. Minutes of this conference shall be sent to all contractors, the owner and the division of state construction;
- (2) Monthly Progress Meetings
  - (a) The designer shall establish and conduct a regular schedule of monthly meetings to be held at the job site each month throughout the entire construction period. Authoritative home office and project personnel representatives of each prime contractor shall be required to attend such meetings. The owner and the division of state construction shall be notified of such meetings and are expected to be represented. The purpose of these regular meetings is to assess the monthly status and progress of the work. Remedial measures, if necessary, should be decided upon by joint agreement and the results thereof evaluated at the next meeting. These meetings shall be open to the subcontractors, material suppliers and any others who can contribute beneficially toward maintaining required job progress, and such personnel shall be encouraged to attend. It shall be the principal purpose of these meetings or conferences to effect coordination, cooperation, and assistance in every practical way to maintain progress of the project and to complete the project within the contract time.
  - (b) The designer shall prepare and submit to both the owner and to the division of state construction a report of the pertinent and salient matters considered and conclusions reached at each of these monthly meetings, together with such other matters relating to project progress throughout the life of the contract;
- (3) Construction Progress Reports
  - (a) The designer shall submit copies of monthly construction progress reports to both the owner and the division of state construction. Sample forms may be obtained from the division of state construction. Particular attention shall be given to the schedule status of the work, indicating whether or not work is on schedule, giving reasons if work is not on schedule, and the status of required insurance. Reports shall indicate date of starting work and scheduled date of completion.
  - (b) Construction progress reports shall include weekly inspection reports by the designer and all consultants involved, consistent with work in progress. Sample forms for weekly inspection reports may be obtained from the division of state construction;
- (4) Field Testing (Witnessing and Approving Results of All Field Testing on the Project). Copies of test results shall be sent to the division of state construction;
- (5) Details. Processing shop drawings, providing details and interpretations, and processing material lists and other data with sufficient dispatch to preclude construction delays;
- (6) Administration. Providing general administration for construction contracts;
- (7) Change Orders
  - (a) No change in the construction from approved plans and specifications shall be made until a change order has been prepared and approved, except in the case of emergency, as covered in general conditions (Form OC-15).
  - (b) Change orders shall be prepared with sufficient copies to provide one to each holder of contract documents and one copy for the contractor's surety.
  - (c) Change orders shall be accompanied by a complete breakdown showing computation of the cost, together with a written explanation of the change and reasons for the change.
  - (d) The designer, by his submission of the change order to the owning agency, certifies that he has examined and analyzed the change order and has found it to be in order, and the cost reasonable.
  - (e) The owning agency shall forward all copies of the change order to the division of state construction for final approval and distribution.
  - (f) Incomplete change orders will be returned to the designer for correction and completion;

- (8) Payments
- (a) Contractors' requests for payments shall be submitted to the designer for approval.
  - (b) Designer submits for payment. After payment requests have been approved, the designer shall apply his certificate and submit the requests to the owner in sufficient copies for payment. The designer's certificate shall show the following:
    - (i) total amount of contract,
    - (ii) extra work,
    - (iii) credits,
    - (iv) total of contract plus or minus any changes,
    - (v) value of work performed to date,
    - (vi) value of material stored on the site,
    - (vii) retainage,
    - (viii) amount previously paid,
    - (ix) amount of present certificate,
    - (x) balance of contract sum;
- (9) Final Inspection
- (a) Prior to issuance of final payment certificates, the designer shall schedule a formal final inspection.
  - (b) Written notice of the inspection shall be furnished not less than one week prior to the inspection to the owning agency, the division of state construction, the contractors concerned, other persons designed by the owning agency, and, where applicable, the Department of Insurance (engineering division), the division of health services of the Department of Human Resources (sanitary engineering section), and the Department of Labor.
  - (c) The designer shall conduct the inspection and tabulate a punchlist of all defects or discrepancies for correction by the responsible contractors. Copies of the punchlist will be furnished to all parties.
  - (d) Upon completion, by the contractors, of corrections required by the punchlist, the designer shall schedule a second inspection at the convenience of the owning agency and shall furnish written notice not less than one week prior to such inspection to the owning agency, the division of state construction and the contractors concerned. Within one week following such inspection, the designer shall furnish written notice to the division of state construction as to whether or not the punchlist items have been completed.
  - (e) Upon completion of the project, the designer shall compute the total time for completion as allowed in the contract, plus any time extensions granted and determine the number of days, if any, in excess of the contract construction time for which the several contractors appear liable for liquidated damages. The designer shall then notify the affected contractors of any proposed assessments of liquidated damages and allow the contractors time to respond thereto. The designer shall then prepare recommendation to the owning agency and to the division of state construction as to the amount of liquidated damages, if any, to be assessed and the portion of such assessment attributed to each of the several prime contractors.
  - (f) Upon acceptance of the project, the designer shall assemble written guarantees, affidavits, manuals of instruction for operation, and other required and closing papers of the contractors; issue certificates of final completion, certificates of compliance as required by G.S. 133-1.1, final certificates for payment; set the date for the beginning of the guarantee period; and forward all closing papers to the owning agency with appropriate duplicates to the division of state construction.
  - (g) Contractors shall not cancel their builder's risk insurance until final acceptance of the project (including completion of the punchlist items) and then shall furnish the required cancellation notice to the designer and the owning agency.
  - (h) Final inspection shall not be scheduled until all contracts are completed unless otherwise approved by the division of state construction.
  - (i) Owning agencies shall not occupy or use any portion of the project unless such occupancy or use has been approved by the division of state construction. In such instances, the owning agency must comply with all conditions required by the division.

*History Note:* Authority G.S. 133-1.1; 143-341; 143B-10;  
Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30A .0404 CONTRACTOR DISPUTES**  
**01 NCAC 30A .0405 REVIEW BY DIVISION OF STATE CONSTRUCTION**

*History Note:* Authority G.S. 143-135.3; 143B-10; 1 NCAC 1B;  
Eff. February 27, 1979;  
Expired Eff. August 1, 2018 pursuant to G.S. 150B-21.3A.

**01 NCAC 30A .0406 REVIEW BY STATE CONSTRUCTION OFFICE FOR FIRE SAFETY REQUIREMENTS**

In all cases where plans are submitted to the State Construction Office pursuant to G.S. 58-31-40:

- (1) The owner shall submit complete construction documents to the State Construction Office in accordance with the planning procedures in Rule .0208 of this Chapter.
- (2) Pursuant to G.S. 58-31-40 (c), should an owner request review and final approval of the plans by the State Construction Office and the Department of Insurance and if the plans have not been approved by the Commissioner of Insurance within 60 days of submittal, such review and final approval shall be conducted by the State Construction Office within 30 days.
- (3) No type of structural work shall be initiated by the owner without prior approval of the State Construction Office.

*History Note:* Authority: G.S. 143-135.26; S.L. 2001-496, s. 11;  
Temporary Adoption Eff. February 1, 2003;  
Eff. March 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**SUBCHAPTER 30B - NORTH CAROLINA CAPITAL BUILDING AUTHORITY**

**01 NCAC 30B .0101 POWERS AND DUTIES**

*History Note:* Authority G.S. 129-42.2;  
Eff. February 27, 1979;  
Amended Eff. October 1, 1984;  
Repealed Eff. January 1, 1988.

**01 NCAC 30B .0102 AGENCIES UNDER THE AUTHORITY**

*History Note:* Authority G.S. 129-42.1;  
Eff. February 27, 1979;  
Repealed Eff. October 1, 1984.

**01 NCAC 30B .0103 APPROVAL OF CONSTRUCTION CONTRACTS UNDER \$50,000**  
**01 NCAC 30B .0104 SELECTION PROCEDURES FOR ARCHITECTS AND ENGINEERS**

*History Note:* Authority G.S. Chapter 129, Article 7;  
Eff. February 27, 1979;  
Repealed Eff. October 1, 1984.

**01 NCAC 30B .0105 SELECTION OF ARCHITECTS: ENGINEERS AND OTHER CONSULTANTS**

*History Note:* Authority G.S. 129-42;

*Eff. October 1, 1984;*  
*Repealed Eff. January 1, 1988.*

**01 NCAC 30B .0106 APPROVAL OF CONSTRUCTION CONTRACTS**

*History Note: Authority G.S. 129-42; 143-341;*  
*Eff. October 1, 1984;*  
*Repealed Eff. June 1, 1986.*

**01 NCAC 30B .0107 ADVERTISEMENT**

*History Note: Authority G.S. 129-42;*  
*Eff. October 1, 1984;*  
*Repealed Eff. January 1, 1988.*

**SUBCHAPTER 30C - ENERGY DEVELOPMENT AUTHORITY**

**SECTION .0100 - GENERAL PROVISIONS**

- 01 NCAC 30C .0101 PURPOSE**
- 01 NCAC 30C .0102 STAFF**
- 01 NCAC 30C .0103 LOCATION**

*History Note: Authority G.S. 159F-1; 159F-4(a),(c);*  
*Eff. August 1, 1984;*  
*Repealed Eff. June 1, 1986.*

- 01 NCAC 30C .0104 REQUESTS FOR INFORMATION BY THE PUBLIC**
- 01 NCAC 30C .0105 FUNCTION**

*History Note: Authority G.S. 159F-4(c); 159F-5(a)(1) through (a)(16); 159F-6; 159F-7(c); 159F-8;*  
*Eff. August 1, 1984;*  
*Repealed Eff. December 1, 2012.*

**SECTION .0200 - RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES**

- 01 NCAC 30C .0201 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES**

*History Note: Authority G.S. 150B-11; 150B-14; 159F;*  
*Eff. August 1, 1984;*  
*Repealed Eff. December 1, 2012.*

**SUBCHAPTER 30D - STATE BUILDING COMMISSION DESIGNER AND CONSULTANT SELECTION POLICY**

**SECTION .0100 - GENERAL PROVISIONS**

- 01 NCAC 30D .0101 AUTHORITY**

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by Public Law to perform a multiplicity of duties with regard to the State's Capital Facilities Development and Management Program. In the specific area of state capital improvement project design selection, the SBC is empowered to adopt rules establishing standard procedures and criteria to assure that the designer selected for each state capital improvement



project and the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project. The SBC is responsible and accountable for the final selection of the designer and the final selection of the consultant. The exceptions are The University of North Carolina and the General Assembly which shall be responsible and accountable for the final selection of designers and the final selection of consultants for capital projects in which they are the funded agencies.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30D .0102 POLICY**

It is the policy of the SBC to select designers and consultants for capital improvement projects as defined in G.S. 143-135.27, based on criteria contained herein and to make available to every designer and consultant duly licensed to practice in North Carolina, the opportunity to be considered for providing professional services for those departments and agencies under its jurisdiction. The SBC considers that the selection of competent designers and consultants is vital to providing the State of North Carolina with best and most appropriate facilities consistent with authorized funds. These procedures are intended to provide a basis for the fair and uniform selection of designers and consultants. These procedures for defined projects are intended to be consistent with the 1987 N.C. Session Laws 102. Projects not covered by this policy shall also be consistent with the 1987 N.C. Session Laws 102.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30D .0103 DEFINITIONS**

For purposes of this Subchapter, the following definitions shall apply:

- (1) "Annual Service Agreement" means an open end agreement for professional services with a designer or consultant, subject to the limitations of the Rule in this Subchapter.
- (2) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvement projects and related matters with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of the Rules in this Subchapter may have other titles within his agency but shall carry out the duties assigned herein to the Capital Projects Coordinator. Whenever the Capital Projects Coordinator is referenced herein, it shall be understood to include a designated assistant or representative.
- (3) "Consultant" means any individual, firm, partnership, corporation, association or other legal entity selected for planning and studies of an architectural and engineering nature associated with a capital improvement project. The consultant must be licensed to practice architecture or engineering in the State of North Carolina.
- (4) "Contact person" means the person named in the public advertisement who shall be the Capital Projects Coordinator or his designee.
- (5) "Designer" means any individual, firm, partnership, corporation, association or other legal entity licensed to practice architecture, engineering, or landscaping architecture in the State of North Carolina.
- (6) "Funded agency" means the department, agency, authority, or office that is named in the legislation appropriating funds for the design and/or or construction project.
- (7) "Major projects" means those capital improvement projects whose authorized funding or estimated cost is greater than five hundred thousand dollars (\$500,000.00) or a planning study activity whose authorized funding is greater than fifty thousand dollars (\$50,000.00).

- (8) "Minor projects" means those capital improvement projects whose authorized funding or estimated cost is five hundred thousand dollars (\$500,000.00) or less or a planning or study activity whose authorized funding is fifty thousand dollars (\$50,000.00) or less. Minor projects may also include a grouping of small non-specified or anticipated projects whose aggregate total falls within the minor project cost limitations.
- (9) "Professional services" means those services within the scope of the practice of architecture, engineering or landscape architecture as defined by the public laws of North Carolina.
- (10) "Special inspections" means detailed inspections of materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with construction documents and referenced standards as per Section 1704 of the NC State Building Code.
- (11) "Using agency" means the sub-division of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus, or similar body, as determined by the administrative head of the funded agency.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. June 1, 2005, May 1, 1990; April 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **SECTION .0200 - PROJECT INFORMATION**

### **01 NCAC 30D .0201 PROJECT DESCRIPTION**

It shall be the responsibility of each Capital Projects Coordinator to provide the State Construction Office with a written description of the professional services desired, the program or scope of work, schedule requirements, amount of authorized funds and other appropriate information for each project requiring professional services. This information should be provided to the State Construction Office seven days prior to the publication dates of the first and fifteenth of each month for the North Carolina Purchase Directory. The Capital Projects Coordinator is responsible for prompt initiation of the designer or consultant selection process to enable the completion of designer or consultant selection with 60 days of the date funds are appropriated for a project by the General Assembly or the date of project authorization by the Director of the Budget. The State Building Commission may grant an exception to this requirement upon written request of the funded agency if:

- (1) no site was selected for the project before the funds were appropriated; or
- (2) funds were appropriated for advance planning only.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30D .0202 PUBLIC ANNOUNCEMENT**

Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for professional services, a designated contact person in the using agency and the closing date in the North Carolina Purchase Directory. Public announcement is required prior to designer or consultant selection except in the event of emergency. In the event of an emergency, public announcement is not required and the procedure outlined in Rule .0302 (4) of this policy will be followed.

On projects, the closing date for being considered for professional services shall not be less than ten days for minor projects and 15 days for major projects nor more than 21 days from date of publication in the Purchase Directory.

A letter of interest for each project must be received by the contact person prior to a designer's being considered for professional services.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;*

*Amended Eff. May 1, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **SECTION .0300 - SELECTION OF DESIGNERS OR CONSULTANTS**

### **01 NCAC 30D .0301 DESIGNER OR CONSULTANT QUALIFICATIONS**

All designers or consultants desiring to provide professional services shall file with the State Construction Office a Federal Standard Form 254 by January 1 of each year. Qualifications may be submitted any time during the year; but, during January of each year, all submissions older than 12 months may be destroyed.

In response to a specific project announcement, the designer or consultant may submit a new or updated Standard Form 254 or other information requested by the State Construction Office. Designer or consultant qualifications must be on file or submitted to the State Construction Office prior to being considered by the pre-selection committee.

*History Note: Authority G.S. 143-135.25; 143-135.26;*  
*Eff. January 1, 1988;*  
*Amended Eff. May 1, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30D .0302 PRE-SELECTION**

(a) A pre-selection committee shall be established for all projects requiring professional service. On minor projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and one representative from the State Construction Office. On major projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and two representatives from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design professional.

(b) General Procedure for All Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project. This step shall take place prior to public advertisement in the Purchase Directory, because designers and consultants have a significant need to know in advance the program intent of a project in order to demonstrate their qualifications for the project in their letter of interest. The Capital Projects Coordinator shall receive all letters of interest and other qualification information either directly or from the designated contact person. After a pre-selection priority list is prepared, the list shall remain confidential except to the Secretary of the SBC. If fewer than three letters of interest are received on major projects, the project shall be re-advertised in the Purchase Directory. If fewer than three letters of interest are received following the re-advertisement, the Capital Projects Coordinator may proceed with the selection process using the data received or may advertise again.

(c) Special Procedures for Minor Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project and the qualifications of all firms expressing interest in a specific project. The Capital Projects Coordinator and a representative of the using agency shall meet with the representative from the State Construction Office for the evaluation of each firm and development of a list of three firms in priority order to be presented to the SBC. The Capital Projects Coordinator may institute the interview procedures in Paragraph (d) of this Rule if he deems it beneficial in evaluating the firms. The Capital Projects Coordinator shall submit to the Secretary of the SBC the list of three firms in priority order, including pre-selection information and written recommendations, to be presented to the SBC. The Capital Projects Coordinator shall state in the submission to the SBC that the rules for public announcement and pre-selection have been followed.

(d) Special Procedures for Major Projects: The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The Capital Projects Coordinator shall state in his submission that the rules for public announcement and pre-selection have been followed.

(e) Special Procedures for Emergency Projects: On occasion, emergency design or consultation services may be required for restoration or correction of a facility condition which by its nature poses a hazard to persons or property, or when an emergency exists. Should this situation occur, in all likelihood there will not be sufficient time to follow the normal procedures described in this Rule. The Capital Projects Coordinator on these occasions may declare an emergency, notify the State Construction Office and then obtain the services of a designer or consultant

for consultation or design of the corrective action. In all cases, such uses of these emergency powers shall involve a written description of the condition and rationale for employing this special authority signed by the head of the agency and presented to the SBC at its next normal meeting. Timeliness for obligation of funds or other non-hazardous or non-emergency situations do not constitute sufficient grounds for invoking this special authority.

(f) Fixed Term Contract: A Funded Agency or a Using Agency may require the services of designer(s) or consultant(s) for projects under three hundred thousand dollars (\$300,000) on a fixed term basis for one year. In such cases, designer(s) or consultant(s) for fixed term contracts shall be selected in accordance with the procedures for minor projects in Paragraph (c). In addition, no fixed term contract fee under the jurisdiction of the State Building Commission shall exceed one hundred fifty thousand dollars (\$150,000) in total volume per year regardless of the number of projects. No fee shall exceed thirty-six thousand dollars (\$36,000) per project. Fixed term contracts may be extended for a term of one additional year. Total fees shall not exceed one hundred fifty thousand dollars (\$150,000) for the first year or three hundred thousand dollars (\$300,000) for the two-year period regardless of the number of projects.

(g) Special Procedures for Department of Environment and Natural Resources: For Division of Water Quality projects under the Wetlands Restoration Program, the Funded Agency may require the services of multiple designer(s) or consultant(s) for design and construction management of wetland, stream and riparian buffer restoration projects on a routine basis. In such cases, designer(s) or consultant(s) for such open-ended contracts shall be selected in accordance with the procedures described for minor projects. This does not preclude the Funded Agency's use of the designer selection procedures specified for major or minor projects if it elects to do so. The total volume of business in terms of negotiated design fee shall not exceed seven hundred thousand dollars (\$700,000) for the biannual contract term and no single project fee shall exceed three hundred fifty thousand dollars (\$350,000). In no case shall individual projects exceeding one million five hundred thousand dollars (\$1,500,000) in total costs be assigned for design under an open-end agreement. Open-end agreements under this procedure shall not be extended beyond a two-year term. The funded agency must readvertise on a biannual basis.

(h) Special Procedures for Special Inspections: Special Inspections professional services may be selected utilizing any one of the following methods:

- (1) The special inspections services may be performed as part of the project design services rendered by the project designer selected in accordance with Paragraphs (a) through (d) of this Rule.
- (2) The special inspections services may be performed, independent of the project design services contract, by:
  - (A) a firm selected in accordance with Paragraphs (a) through (d) of this Rule.
  - (B) a firm selected via in accordance with Paragraph (f) of this Rule. Firms for such open-ended contracts shall be selected in accordance with the procedures described for minor projects. This does not preclude the Funded Agency's use of the designer selection procedures specified for major or minor projects if it elects to do so. In addition, no annual contract fee shall exceed three hundred thousand dollars (\$300,000.00) in total volume and no single fee shall exceed one hundred thousand dollars (\$100,000.00). Annual contracts may be extended for one additional year. However, if extended for an additional one-year period, the designer may not be selected for the next annual contract. Total annual fees shall not exceed three hundred thousand dollars (\$300,000.00) for first year or six hundred thousand dollars (\$600,000.00) for two-year period. If and when these fees are used to limit, the agency must readvertise.
  - (C) a firm selected from the consultants formally identified in Article 13 of the Standard Form of Agreement Between Owner and Designer.
  - (D) a firm initially selected using a qualifications based selection process, currently under contract for that project, and qualified to perform special inspections services.

*History Note: Authority G.S. 143-135.25; 143-135.26; S.L. 2001-442, Sec. 6(c); Eff. January 1, 1988; Amended Eff. July 1, 1993; May 1, 1990; Temporary Amendment Eff. May 15, 2002; Amended Eff. June 1, 2005, November 1, 2004; August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

In selecting the three firms to be presented to the SBC, the pre-selection committee should take into consideration such factors as:

- (1) Specialized or appropriate expertise in the type of project.
- (2) Past performance on similar projects.
- (3) Adequate staff and proposed design or consultant team for the project.
- (4) Current workload and State projects awarded.
- (5) Proposed design approach for the project including design team and consultants.
- (6) Recent experience with project costs and schedules.
- (7) Construction administration capabilities.
- (8) Proximity to and familiarity with the area where project is located.
- (9) Record of successfully completed projects without major legal or technical problems.
- (10) Other factors that may be appropriate for the project.

*History Note:* Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30D .0304 DESIGNER OR CONSULTANT SELECTION FOR UNC SYSTEM PROJECTS**

In selecting designers or consultants for its projects, the UNC system shall comply with the preceding policies and pre-selection procedures, except that pre-selection committees need not include a representative of the State Construction Office. The UNC system shall establish its own procedures for final designer or consultant selection. These procedures shall correspond in form to those established below for other than UNC system projects and shall be filed with and approved by the SBC.

*History Note:* Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30D .0305 DESIGNER/CONSULTANT SELECTION FOR OTHER THAN UNC SYSTEM PROJECTS**

Upon receipt of a letter from the Capital Projects Coordinator listing three firms in priority order along with recommendations and pre-selection information, as requested by the SBC, the Secretary of SBC, upon determination that all information has been submitted, will place the request for consideration on the agenda for the next SBC meeting.

The Capital Projects Coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the standard procedures and criteria have been properly followed, the SBC will:

- (1) Select the firms in the priority order recommended by the state or agency; or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

*History Note:* Authority G.S. 143-315.25; 143-135.26;  
Eff. January 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30D .0306 CONTRACT NEGOTIATION**

After the three have been notified of the selection action by The University of North Carolina or the SBC, a representative from the State Construction Office, the Capital Projects Coordinator, and a representative from the using agency will discuss with the selected designer or consultant appropriate information about the project, the scope of services to be provided and the state design/review/construction process.

The State Construction Office will request in writing a detailed fee proposal from the selected designer or consultant. The State Construction Office in coordination with the Capital Projects Coordinator and the using agency will attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked designer or consultant, the process will be repeated with the third-ranked designer or consultant. If a fee still cannot be agreed to, the SBC shall review the history of negotiations and make appropriate determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation with the firms shall be carried out in the original selection order, or call for the Capital Projects Coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process will continue until a fee has been determined that is agreed to by the State Construction Office, the using agency, and the designer or consultant. Annual contracts are subject to special management procedures described herein. Normally, the initial fee negotiation for this type of work will involve mutual agreement in unit costs for time, materials, and overhead; a final lump sum price for each discrete project will be negotiated in advance as each project is ordered. Following execution of the contract, the State Construction Office will publish in the North Carolina Purchase Directory the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.

*History Note:* Authority G.S. 143-135.25; 143-135.26;  
Eff. January 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **SUBCHAPTER 30E - STATE BUILDING COMMISSION DESIGNER OR CONSULTANT EVALUATION PROCEDURES**

### **SECTION .0100 - GENERAL PROVISIONS**

#### **01 NCAC 30E .0101 AUTHORITY**

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by Public Law to perform a multiplicity of duties with regard to the State's Capital Facilities development and management program. In the specific area of state capital improvement project designer and consultant evaluation, the SBC is empowered to develop procedures for accomplishment of such evaluation.

*History Note:* Authority G.S. 143-135.25; 143-135.26;  
Eff. October 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30E .0102 POLICY**

It is the policy of the SBC to evaluate designers for capital improvement projects as defined in G.S. 143-135.27 based on criteria contained herein. Further, it is considered of paramount importance that every state capital improvement project receive a professional design which is timely, of highest professional quality, and in keeping with the project scope. It is to this end that individual designer's or consultant's performance on state capital improvement projects should be fairly and consistently evaluated and used as a factor in designer or consultant selection for future work.

*History Note:* Authority G.S. 143-135.25; 143-135.26;  
Eff. October 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **01 NCAC 30E .0103      DEFINITIONS**

For purposes of this Subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvement projects and related matters with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of these rules may have other titles within the individual's agency but shall carry out the duties assigned herein to the Capital Projects Coordinator. Whenever the Capital Projects Coordinator is referenced herein, it shall be understood to include a designated assistant or representative. Concerning evaluation of designers, or consultants the Capital Projects Coordinator is responsible for the agency's evaluation of each phase of the project as well as the overall designer's or consultant's evaluation.
- (2) "Project Designer" means any individual, firm, partnership, corporation, association or other legal entity licensed to practice architecture, engineering, or landscape architecture in the State of North Carolina. The designer or consultant shall be responsible for the performance of all his consultants. Accordingly, the evaluation of the project designer will include evaluation of the work of all consultants who are included in the designer's contract with the funded agency.
- (3) "Consultant" means any individual, firm, partnership, corporation, association or other legal entity selected for planning and studies of an architectural and engineering nature associated with a capital improvement project. The consultant must be licensed to practice architecture or engineering in the State of North Carolina.
- (4) "Funded Agency" means the department, agency, authority or office that is named in the legislation appropriating funds for the design and/or construction project.
- (5) "Owner's Representative" is an individual appointed by the using agency to represent the using agency on all user-related matters. The owner is the representative of the using agency as defined in Rule .0103(9) of Subchapter 30D - State Building Commission Designer Selection Procedures.
- (6) "Professional Services" means those services within the scope of the practice of architecture, engineering, landscape architecture or surveying as defined by the public laws of North Carolina.
- (7) "Scope Statement" means a written description of the capital project that is to be designed. Normally the scope statement shall reflect the written project description as contained in the project cost estimate validated by the State Construction Office.
- (8) "Evaluation Form" is the form to be used for all designers' or consultants' evaluations. The form shall be developed and approved by the State Building Commission and is the only approved document for this purpose; it may be reproduced by the agencies as required.

*History Note:*      *Authority G.S. 143-135.25; 143-135.26;*  
*Eff. October 1, 1988;*  
*Amended Eff. May 1, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,*  
*2018.*

## **SECTION .0200 - PROJECT INFORMATION**

### **01 NCAC 30E .0201      PROJECT DESCRIPTION**

It shall be the responsibility of each Capital Projects Coordinator, for each Capital Improvements project as defined in G.S. 143-135.27 requiring professional services, to provide the State Construction Office with a written description of the professional services desired, the scope of work, schedule requirements, amount of authorized funds and other appropriate information. Particular emphasis will be placed on a determination as to whether the designer's or consultant's services are to include items such as programming, modeling, special presentations or other requirements beyond specific facility design. This requirement data shall be incorporated in the designer's or consultant's professional services contract and will serve as key elements against which the designer's or consultant's performance will be evaluated.

*History Note:*      *Authority G.S. 143-135.25; 143-135.26;*  
*Eff. October 1, 1988;*  
*Amended Eff. May 1, 1990;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **01 NCAC 30E .0202 DESIGN CONTRACT**

It shall be the responsibility of the Office of State Construction to ensure that both the Capital Projects Coordinator and the designer or consultant have a clear mutual understanding of design requirements for the project and key elements of these requirements are included in the professional services contract between the agency and the designer or consultant.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. October 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **SECTION .0300 - EVALUATION OF DESIGNERS OR CONSULTANTS**

### **01 NCAC 30E .0301 DESIGN PHASES**

Definitions:

- (1) "Pre-Design Phase" is the description of the provision of professional services prior to actual design. If a firm scope of the work is not known, the design agreement may be written in such a manner as to require project programming assistance by the designer or consultant, followed by agency approval of a designer-proposed project scope, prior to commencement of actual design. In evaluating design or consultant services during this phase, the Capital Projects Coordinator may wish to receive input from the Owner's representative.
- (2) "Design Phase" involves preparation of the actual design. The Capital Projects Coordinator must maintain active involvement during the design process in order to be able to evaluate the designer's or consultant's response to owner requirements, the consistency of owner requirements, external design requirements driven by insurance or environmental considerations, etc., the technical design itself, designer/owner response to review comments, adherence to design schedule, and quality of cost estimate, as well as adherence of the cost estimate to the project budget. In general, the evaluation of this phase is to encompass the efficiency and effectiveness of the designer in adherence to the project scope statement. Included is an evaluation of subconsultants if utilized. The subconsultant performance will also be considered in evaluation of the principal designer. The Capital Projects Coordinator, in preparing the evaluation of the design phase, may wish to receive input from the Owner's representative as well as the State Construction Office.
- (3) "Bidding-Construction Phase" encompasses the process for provision of professional services for bidding, award, and construction of the project. As the job progresses past contract award, the Capital Projects Coordinator must maintain a continuing awareness of designer performance during the period of construction including the shop drawing review process, payment processing, change order management, and field administration including project cost control. The Capital Projects Coordinator or owner's representative should attend the monthly construction progress meetings. The Capital Projects Coordinator must be capable of discerning the degree to which change orders are precipitated by design errors or omissions. The Capital Projects Coordinator must be capable of determining how well the designer provides general administration of the performance of construction contracts, including inspection and continuous liaison of the work to ensure compliance with plans and specifications during the construction process. At the completion of the project, the Capital Projects Coordinator must ensure that the project designer has completed all required close-out actions. The Capital Projects Coordinator will be responsible for preparation of the Bidding-Construction Phase evaluation. Assistance will be sought from the Owner's representative and the State Construction Office in preparation of the evaluation for this phase of the project.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. October 1, 1988;*



*Amended Eff. May 1, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30E .0302 OVERALL JOB PERFORMANCE**

The Capital Projects Coordinator shall determine the designer's or consultant's overall performance for the completed project. The overall rating is intended to reflect the effectiveness of the design in achieving the predetermined project scope in a timely, cost effective manner. The evaluation shall encompass the designer's or consultant's management approach to the project including cooperation of the designer's staff, communication with the Capital Projects Coordinator and Owner's representative, timeliness of action, and performance of consultants. The Capital Projects Coordinator shall invite input from the Owner's representative and the State Construction Office. All prime contractors shall be offered the opportunity to provide an assessment of the designer at job completion. The Capital Projects Coordinator shall be responsible for the final overall rating. This summary evaluation shall not necessarily reflect a precise numerical averaging of scores for the Pre-design, Design, and Bidding-Construction phases but will be generally representative of those scores. To be timely and useful, designer evaluation data will be accumulated within 30 days of submission of the final report. Prior to completion of the final designer evaluation, the Capital Projects Coordinator shall submit the proposed evaluation to the designer for comment. Comments received from designers or consultants shall be considered by the Capital Projects Coordinator. At this stage, the Capital Projects Coordinator shall prepare the final designer or consultant evaluation and provide a copy to the designer or consultant. The form approved by the SBC shall be used for this purpose.

*History Note: Authority G.S. 143-135.25; 143-135.26;*  
*Eff. October 1, 1988;*  
*Amended Eff. May 1, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30E .0303 POST OCCUPANCY EVALUATION**

The designer evaluation process allows for a second evaluation to be conducted within 36 months of the completion of a capital project if design-related latent defects are discovered. A separate procedure of the State Building Commission may require a formal post-occupancy evaluation within 12 months of a building completion. The data from the 12 month post-occupancy evaluation can be used as a substitute for the follow-up designer evaluation if the Capital Projects Coordinator so determines.

*History Note: Authority G.S. 143-135.25; 143-135.26;*  
*Eff. October 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30E .0304 INTERIM DESIGNER OR CONSULTANT EVALUATION**

The designer or consultant may request preparation of an interim evaluation form by the Capital Projects Coordinator or the Coordinator may elect to prepare an interim evaluation if so desired. This interim evaluation is intended to reflect performance to date and should be used as a guidance device for correction of performance prior to the final evaluation.

*History Note: Authority G.S. 143-135.25; 143-135.26;*  
*Eff. October 1, 1988;*  
*Amended Eff. May 1, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30E .0305 SUBMISSION OF FINAL REPORT**

The Capital Projects Coordinator shall submit the completed final evaluation to the Office of State Construction with a copy to the designer or consultant. The designer or consultant shall have the opportunity to comment on the evaluation to the Office of State Construction with a copy to the Capital Projects Coordinator. Such comments on the final evaluation shall become a part of the final evaluation record. It is imperative that the final designer or

consultant evaluation be completed and presented to the State Construction Office for all capital projects within 60 days of the final report. If the evaluation is not completed within the prescribed time frame, the State Building Commission may elect to process no further design awards for an agency until the evaluation is complete.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. October 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30E .0306 REPORT COMPILATION**

The Office of State Construction will be responsible for maintaining designer or consultant evaluation data. The data maintained shall be on an individual job basis and also cumulative by the designer or consultant. Data will be made available on request to individual designer or consultant preselection committees. The data maintained by the State Construction Office will reflect performance history for a period of five years. All evaluation data on completed projects in excess of five years of age will be removed from State Construction Office files and will not be used as a factor in the cumulative evaluation.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. October 1, 1988;  
Amended Eff. May 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **SECTION .0400 - POST-EVALUATION PROCEDURES**

#### **01 NCAC 30E .0401 AWARDS PROGRAM**

Capital Projects Coordinators who consider that designer performance on a completed Capital Improvement Project merits special recognition may nominate the designer for a certificate of Design Merit. Nominations will be made by the Capital Projects Coordinator to the Office of State Construction which will screen the nominees and will in turn make appropriate recommendations to the State Building Commission. The State Construction Office may also initiate award recommendations. The SCB will consider all nominations and make final approval of all awards. The State Building Commission shall arrange for presentation of the certificates at a suitable ceremony during a time and place of its own choosing; however, these presentations will normally be made during the annual State Construction Conference. The State Construction Office shall provide staff support to the State Building Commission for this program.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. October 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30E .0402 APPEALS OF ASSIGNED EVALUATIONS**

If a design or consultant firm considers that the assigned evaluation is improper and the opportunity to provide rebuttal comments for the record is insufficient to resolve the assigned rating, the designer or consultant may appeal the rating to the Office of State Construction. The State Construction Office will appoint and convene a rating panel of three professional State employees of which at least one member is a licensed professional architect or engineer to hear the appeal and render a decision. The hearing shall involve at a minimum the Capital Projects Coordinator and the Owner's representative as well as representatives of the designer or consultant who shall appear before the panel and which is open to the public. The State Construction Office hearing panel shall issue a report to the State Building Commission of the hearing and the decision reached. If the Capital Projects Coordinator or designer desires further recourse, the State Construction Office panel decision may be formally appealed to the Office of Administrative Hearings pursuant to N.C.G.S. 150B.

*History Note: Authority G.S. 143-135.25; 143-135.26;  
Eff. October 1, 1988;*

*Amended Eff. May 1, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **SUBCHAPTER 30F - STATE BUILDING COMMISSION CONTRACTOR EVALUATION PROCEDURES**

### **SECTION .0100 - GENERAL PROVISIONS**

#### **01 NCAC 30F .0101 AUTHORITY**

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by Public Law to perform a multiplicity of duties with regard to the State's Capital Facilities development and management program. In the specific area of state capital improvement project contractor evaluation, the SBC is empowered to develop procedures for accomplishment of such evaluation.

*History Note: Authority G.S. 143-135.26(4);*  
*Eff. January 1, 1992;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0102 POLICY**

It is the policy of the SBC to evaluate the work performed by prime contractors for capital improvement projects based on criteria contained herein. Further, it is considered of paramount importance that every state capital improvement project be constructed of a level of quality and adherence to a time schedule in keeping with the contract plans and specifications. It is to this end that individual prime contractor's performance on state capital improvement projects should be fairly and consistently evaluated and such evaluations used as a factor in determining qualifications of prime contractors to bid on future state capital improvement projects. If such evaluations lead to a determination that the level of performance by a contractor so warrants, the contractor may be disqualified from bidding on state capital improvement projects for a specified period of time.

*History Note: Authority G.S. 143-135.26(4);*  
*Eff. December 1, 1991;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0103 DEFINITIONS**

For purposes of this Subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvements projects and related matters with the State Construction Office (SCO) and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of these Rules may have other titles within the individual's agency but shall carry out the duties assigned herein to the Capital Projects Coordinator. Whenever the Capital Projects Coordinator is referenced herein, it shall be understood to include a designated assistant or representative. Concerning evaluation of contractors, the Capital Projects Coordinator is responsible for the agency's evaluation of each phase of the project as well as the overall contractor evaluation.
- (2) "Contractor" means any individual, firm, partnership, corporation, association or other legal entity licensed to perform construction in the State of North Carolina. The contractor evaluation procedure applies to a firm designated as a "prime contractor" and may include contractors receiving awards under the single prime or multiple-prime method of contract bidding and award. The prime contractor shall be responsible for performance of all sub-contractors. Accordingly, the evaluation of the prime contractor will include evaluation of the work of all sub-contractors, required by terms of the contract to be listed by the prime contractor, and all material suppliers.

- (3) "Project Designer" means any individual, firm, partnership, corporation, association or other legal entity licensed to practice architecture, engineering, or landscape architecture in the State of North Carolina.
- (4) "Funded Agency" means the department, agency, authority or office that is named in the legislation appropriating funds for the design and/or construction of a project.
- (5) "Owner's Representative" is an individual appointed by the using agency to represent the using agency on all user-related matters.
- (6) "Using Agency" means the sub-division of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus, or similar body, as determined by the administrative head of the funded agency.
- (7) "Scope Statement" means a written description of the capital project that is to be designed and constructed. Normally, the scope statement shall reflect the written project description as contained in the project cost estimate validated by the State Construction Office.
- (8) "Contractor Evaluation Form" is the form to be used for all contractor evaluations. The form, approved by the State Building Commission, is the only approved document for this purpose; the form may be reproduced by agencies as required.

*History Note:* Authority G.S. 143-64.31; 143-135.26;  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **SECTION .0200 - PROJECT AND CONTRACT INFORMATION**

### **01 NCAC 30F .0201 PROJECT DESCRIPTION**

(a) It shall be the responsibility of each Capital Projects Coordinator, for each Capital Improvements project as defined in G.S. 143-135.27 requiring professional services, to provide the State Construction Office with a written description of the professional services desired, the scope of work, schedule requirements, amount of authorized funds and other appropriate information. This phase of the project development is intended to convey project information.

(b) It shall be the joint responsibility of the Capital Projects Coordinator and Office of State Construction, to the best of their belief and knowledge, to ensure that the contract plans and specifications accurately reflect the description of the work to be performed by each prime contractor. This phase of the project development, intended to convey contract information, which is a sub-set of project information, is critical as the evaluation of the prime contractor's performance will depend in part on the contract requirements clearly delineating the work to be performed and establishing an appropriate time frame for contract completion.

*History Note:* Authority G.S. 143-135.26(4);  
Eff. December 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30F .0202 PRE-BID CONFERENCES AND SITE REVIEWS**

(a) The Capital Projects Coordinator shall evaluate each assigned project to determine if the complexity of a project warrants conducting one or more pre-bid conferences including site visits. The Capital Projects Coordinator shall be responsible for ensuring that the owner's representatives are familiar with the contract requirements and the consequences of the construction work on the owner.

(b) This step is included as attempts may be made by the owner to request that additional tasks be performed by the contractor to meet the owner's special requirements without the capital projects coordinator's and designer's knowledge and the contract plans and specifications do not contain any provision for these special requirements. Development of any special provisions and a general understanding of the contract requirements are a vital part of the contract process prior to the opening of bids.

*History Note:* Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **SECTION .0300 - EVALUATION OF CONTRACTORS**

### **01 NCAC 30F .0301 DEFINITIONS**

(a) "Pre-Bid Phase" is the phase of the contract work prior to receipt of bids. If the pre-bid or site visit meeting is utilized, the interest or participation by a contractor in this phase of the construction process does demonstrate a good faith effort by a prime contractor to understand the project requirements and resolve differences prior to bid opening. For this reason, participation by contractors in this phase does clearly demonstrate an effort on the contractor's part to facilitate the construction process and may, therefore, be evaluated. The Capital Projects Coordinator must be involved in this process.

(b) "Contract Award Phase" is a period during the award process and includes but is not limited to submission of all documents required for award, including Minority Business Enterprise (MBE) data, bonds, insurance documentation, and the executed contract documents.

(c) "Construction Phase" is the most critical portion of the work and includes not only field execution of the work but also, as a minimum: project/job site mobilization; shop drawing processing; development of job schedule; coordination/cooperation with other contractors, using agency and designer as appropriate; coordination of the activities of sub-contractors; field supervision; prosecution of the works; adherence to quality standards; and timeliness of response to field conditions or modified job requirements including change order management. The Capital Projects Coordinator must be involved in the construction phase to the degree that meaningful evaluations can be prepared for this phase; this involves Capital Projects Coordinator's attendance at monthly progress meetings or more often if necessary. Attendance at and participation in scheduled progress meetings by prime contractors shall be evaluated; an evaluation shall be performed for contractors who have been assigned project coordinator duties as outlined in the contract.

(d) "Post Construction Phase" includes but is not limited to the development and completion of the job punch list, assembly of all warranty information and product brochures, and provision of "as built" information. The Capital Projects Coordinator must maintain continuing involvement in the project until final close-out to evaluate the contractor's performance in this final phase.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30F .0302 OVERALL JOB PERFORMANCE**

(a) The Capital Projects Coordinator shall determine the contractor's overall performance for the completed project. The overall rating is intended to reflect the performance of the prime contractor(s) in fulfilling the terms of their contract.

(b) The Capital Projects Coordinator will take into consideration the clarity of the project plans and specifications, any owner's special requirements placed on the project, and other factors such as weather and overall difficulty of the construction in assigning the overall evaluation. Obviously, the terms of the contract including project scheduling, cooperation among prime contractors, and other factors shall be considered. Further, the Capital Projects Coordinator will consider the impact of other factors, outside the contractor's control, on job performance such as owner's or designer's failure to promptly process catalog/material submittals, change orders, or detailed inspections which impinge upon job progress.

(c) The Capital Projects Coordinator must be involved in the project during the construction phase to adequately provide a meaningful evaluation and shall invite input from the owner's representative and the State Construction Office.

(d) The project designer shall be offered the opportunity to provide an assessment of the prime contractor(s) at job completion.

(e) On all multiple prime capital improvement projects, each prime contractor shall be offered the opportunity to provide input concerning the prime contractor being evaluated.

(f) The Capital Projects Coordinator may also evaluate the work performed by a sub-contractor or material supplier required to be named within the terms of the contract when such evaluation will provide clarification or enhancement of the evaluation assigned to the prime contractor. At the discretion of the Capital Projects

Coordinator, input may be invited from any or all sub-contractors or material suppliers required to be named within the terms of the contract. If unsolicited input is received by the Capital Projects Coordinator from a sub-contractor or material supplier required to be named within the terms of the contract, such input may be considered in the evaluation process.

(g) The Capital Projects Coordinator shall be responsible for the final overall rating, which is a number rounded to one significant digit past the decimal (e.g., 2.5, 3.4, etc.) and shall be listed on the bar line noted as "Overall Rating." The evaluations for sub-phases of the project are to be completed on the rating form but may show as an "X" or a numerical rating on the line for the sub-phase at the option of the Capital Projects Coordinator. This summary evaluation shall not necessarily reflect a precise numerical averaging of scores for the various project phases but will be generally representative of those scores.

(h) Prior to completion of the final contractor evaluation, the Capital Projects Coordinator shall submit the proposed evaluation to the prime contractor for comment. Comments received from the prime contractor shall be considered by the Capital Projects Coordinator.

(i) To be timely, and useful, contractor evaluation data will be accumulated within 30 days of final project acceptance. At this stage, the Capital Projects Coordinator shall prepare the final contractor evaluation, provide a copy to the prime contractor being evaluated, and submit the final evaluation to the Office of State Construction. The form approved by the SBC shall be used for this purpose.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0303 INTERIM CONTRACTOR EVALUATION**

The prime contractor(s) may request preparation of an interim evaluation form by the Capital Projects Coordinator or the Capital Projects Coordinator may elect to prepare an interim evaluation. The Capital Projects Coordinator shall seek input from the project designer if an interim evaluation is provided. This interim evaluation is intended to reflect performance to date and should be used as a guidance device for correction of performance prior to the final evaluation.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0304 SUBMISSION OF FINAL EVALUATION**

The Capital Projects Coordinator shall submit the completed final evaluation to the SCO with a copy to the prime contractor. The prime contractor shall have the opportunity to comment on the evaluation to the SCO with a copy to the Capital Projects Coordinator. These final evaluation comments shall become a part of the final evaluation record. The final contractor evaluation shall be completed and presented to the SCO within 60 days of the project's final acceptance. SCO will monitor the completion of all required evaluations and will not close out a project on which all evaluations have not been performed. If the evaluation is not completed within the prescribed time frame, the SBC may advise SCO to process no further contract awards for an agency until the evaluation is complete. Under such circumstances, the SBC will require the Capital Projects Coordinator to appear before the Commission to explain why the evaluation has not been completed.

*History Note: Authority G.S. 143-135.26(4);  
Eff. December 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30F .0305 EVALUATION REVIEW**

(a) SCO shall maintain contractor evaluation data. This data shall be maintained on an individual job basis, and shall also be maintained cumulatively by contractor (based on contractor license number). The contractor evaluation data shall be that information prepared by the Capital Projects Coordinator during the evaluation process set forth in this Subchapter. All numerical ratings shall be given pursuant to Rule .0302 of this Section and shall evaluate those

phases of the work set out in Rule .0301 of this Section; the form called for in Rule .0103(8) of this Subchapter shall be used exclusively for this purpose.

(b) The data maintained by the SCO shall reflect performance history for a period of five years. All evaluation data on completed projects over five years old shall be removed from SCO files and shall not be used as a factor in the cumulative evaluation.

(c) A contractor whose cumulative evaluation falls below a mark of 3.5 shall be determined to have provided an unsatisfactory level of performance and may not be allowed to bid on or serve as a sub-contractor on State capital improvement projects during a corrective period. All references to pre-bid disqualification status in this Section shall also be considered to apply to disqualification of a prime contractor to serve as a sub-contractor on State capital improvement projects during the disqualification period.

(d) To be utilized for pre-bid disqualification, a prime contractor's cumulative evaluation must be based on a minimum of three evaluations on at least three separate capital projects. Further, if a contractor is assigned a single final evaluation of 2.5 or lower, this action alone shall be sufficient to call the contractor's performance into question and may result in pre-bid disqualification during a corrective period.

(e) In both instances, i.e., a cumulative mark falling below 3.5 or a single evaluation of 2.5 or lower, the SCO shall convene a panel of five persons to review the evaluation and make a recommendation to the SBC. (A single final evaluation of 2.5 or lower, when applied to the cumulative total, shall not initiate further immediate review if it causes the cumulative rating to fall below 3.5.) The panel shall consist of three design/construction professional State employees of which a minimum of one employee shall be a licensed architect or engineer as appointed by the Director of State Construction and two members of the SBC as appointed by the Chairman of the Commission of which a minimum of one shall be a licensed contractor.

(f) The panel may recommend to the State Building Commission either of the following actions as a result of its review:

- (1) disqualification of the contractor from bidding and placement of the contractor in a pre-bid disqualification status for a corrective period of two years;
- (2) rejection of disqualification but issuance of a warning to the contractor that continued poor performance may result in disqualification.

The SCO shall retain file copies of the ratings, disqualifications and warnings.

(g) In all instances, notification of a contractor having been assigned to a pre-bid disqualification status or having been issued a warning shall be by the Chairman of the State Building Commission and only then after review and approval by the Commission of the disqualification or warning action.

(h) The disqualification as approved by the Commission shall be for a period of two years. The two-year period is intended to provide opportunity for a contractor to implement significant corrective action to improve performance. At the completion of the two-year period, the prime contractor may make application for reinstatement to the qualified bidders list; reinstatement shall be subject to action by the SBC. In the application for reinstatement, the contractor shall set out the improvements that have been made to correct the specific areas in which the contractor was scored below 3.5 in its cumulative evaluation. If the improvements listed and the investigation of the contractor made by the SBC are such that the Commission forecasts the contractor's performance would be 3.5 or above if reinstated, then the SBC shall reinstate the contractor to the qualified bidders list. If the SBC approves reinstatement, the contractor's pre-bid disqualification shall be removed, thus allowing the contractor to bid.

(i) Removal of a contractor from the pre-bid disqualification status, upon approval by the SBC, shall involve deletion of all evaluations from the State Construction Office's records.

(j) If a contractor has been removed from the qualified bidders list by virtue of accumulated evaluations falling below 3.5 and routine removal of five-year old evaluations causes the contractor to achieve an overall evaluation score of 3.5 or higher, the contractor shall not be automatically reinstated to the qualified bidders list but rather must remain in a disqualified status for a total of two years with reinstatement considered by the SBC as outlined in this Rule. If after the two-year corrective period the SBC does not approve removal of a contractor from the pre-bid disqualification status, the prime contractor may reapply after a period of 12 months and annually thereafter until the pre-bid disqualification status is removed.

(k) Lists of all contractors who are in a pre-bid disqualification status shall be maintained by the SCO. Prior to bid opening, the project designer shall obtain from the SCO a list of those contractors in a pre-bid disqualification status and shall ensure that no bids for State capital improvement projects shall be read from a contractor in such status.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Amended Eff. April 1, 1999;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **SECTION .0400 - POST-EVALUATION PROCEDURES**

### **01 NCAC 30F .0401 POST-OCCUPANCY EVALUATION**

Following project close-out, the prime contractor is often required to take remedial action to correct discrepancies which fall under product or construction warranty. While this phase of the project normally proceeds without serious difficulty, Capital Projects Coordinators may at their option, submit a special evaluation during the contract warranty period if circumstances dictate. This special evaluation will involve completion of the optional post-occupancy evaluation portion of the form but will not normally involve re-computation of the evaluation(s) assigned for the previous four phases. A new overall contractor evaluation will be assigned which will take into consideration the previously assigned evaluation. If the post-occupancy contractor evaluation is completed, the contractor being evaluated will be afforded the same opportunity to provide input on the evaluation as was provided on the evaluation made at job construction completion.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30F .0402 AWARDS PROGRAM**

Capital Projects Coordinators who determine that contractor performance on a completed capital improvement project merits special recognition may nominate the contractor for a Certificate of Merit. Nominations will be made by the Capital Projects Coordinator to the SCO which will screen the nominees and will in turn make appropriate recommendations to the SBC. The SCO may also initiate award recommendations. The SBC will consider all nominations and make final approval of all awards. The State Building Commission shall arrange for presentation of the certificates at a suitable ceremony during a time and place of its own choosing; however, these presentations will normally be made during the annual State Construction Conference. The SCO shall provide staff support to the State Building Commission for this program.

*History Note: Authority G.S. 143-135.26(4);  
Eff. December 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30F .0403 APPEALS OF ASSIGNED EVALUATIONS: DISQUALIFICATION FROM BIDDING**

(a) If a prime contractor considers that the assigned final evaluation is incorrect the prime contractor may appeal the action to the SCO. It is emphasized that this appeal is an appeal to an assigned evaluation score and is separate from an appeal resulting from assignment to a pre-bid disqualification status described in Rule .0305 of this Subchapter.

(b) To evaluate an appeal of an individual final evaluation, the SCO will appoint and convene a rating panel of five persons of which three will be professional State employees and of the State employees at least one member is a licensed professional architect or engineer to hear the appeal and render a decision. The remaining two members, one of which will be a licensed contractor, are to be from the SBC as appointed by the Chairman. The hearing shall involve, at a minimum, the Capital Projects Coordinator and the owner's representative as well as representatives of the prime contractor who shall appear before the panel and which is open to the public. The SCO hearing panel shall issue a report to the SBC on the hearing and the decision reached.

(c) If the Capital Projects Coordinator or prime contractor desire further recourse to the initial decision by the SCO on an assigned evaluation or a decision by the SBC concerning disqualification to bid on state capital improvement projects or a decision by the SBC to not reinstate a contractor to the bidders list, the decision may be formally appealed to the Office of Administrative Hearings pursuant to N.C.G.S. 150B.

*History Note: Authority G.S. 143-135.26(4);  
Eff. January 1, 1992;*



*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## **CHAPTER 30 - STATE CONSTRUCTION OFFICE**

### **SUBCHAPTER 30G - STATE BUILDING COMMISSION PROCEDURES AND CRITERIA FOR AUTHORIZATION TO USE AN ALTERNATIVE CONTRACTING METHOD**

#### **SECTION .0100 - GENERAL PROVISIONS**

##### **01 NCAC 30G .0101 AUTHORITY**

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by law to perform a multiplicity of duties with regard to the State's capital facilities development and management program. In the specific area of State capital improvement project requirements for building contracts, the SBC is empowered by G.S. 143-135.26 to adopt procedures which allows a State agency or institution, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128. The use of any other alternative method shall be approved in advance by the SBC for any single project.

*History Note: Authority G.S. 143-135.26;  
Temporary Adoption Eff. July 1, 1996;  
Eff. August 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

##### **01 NCAC 30G .0102 POLICY**

Generally, it is the policy of the SBC that the public's interest is typically best served by the letting of public construction contracts pursuant to the regular statutory procedures, particularly the provisions of G.S. 143-128. Nevertheless, in addition to those situations when a project cannot be completed using the standard methods, the SBC will recognize certain extraordinary circumstances that are appropriate, in the public's interest, and will justify an exemption from the methods of contracting authorized under G.S. 143-128. Such extraordinary circumstances must be created by some unusual or unforeseen occurrence or situation and includes those situations set forth in 01 NCAC 30G .0105(b); any request made for an exemption as a result of such extraordinary circumstance must demonstrate to the SBC that requisite justification exists to obtain the exemption.

*History Note: Authority G.S. 143-135.26(9)(b);  
Temporary Adoption Eff. July 1, 1996;  
Eff. August 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

##### **01 NCAC 30G .0103 DEFINITIONS**

For the purposes of the rules in this Section, the following definitions shall apply:

- (1) "Alternative contracting method" includes but is not limited to:
  - (a) the single-prime contracting system, not otherwise authorized under G.S. 143-128,
  - (b) the design-build delivery system, or
  - (c) the construction management delivery system.
- (2) "Chairman" means the Chairman of the State Building Commission.
- (3) "Construction management delivery system" means the alternative contracting method where the public owner contracts for a fee with a single person, but not the project general contractor, who administers contracts with separate contractors for the construction of the project and who is responsible as agent to the public owner for the coordination and management of the project, but where the public owner remains liable to the separate contractors.
- (4) "Design-build delivery system" means that the public owner contracts for a fee with a single person for the design, management and construction of a project.

- (5) "Director" means the Director of the State Construction Office.
- (6) "Exemption" means the grant of authorization by the SBC for the use of a method of contracting not otherwise authorized under G.S. 143-128.
- (7) "Person" means a person, firm or corporation.
- (8) "Project" means the building or facility for which an exemption is requested by the public owner, and upon which the work will be performed.
- (9) "Public owner" means a state agency or institution, a local government unit, or any other entity subject to the provisions of G.S. 143-129.
- (10) "SBC" means the State Building Commission.
- (11) "Work" means the erection, repair, construction, renovation or alteration to be performed upon a building or facility.

*History Note: Authority G.S. 143-135.26;  
 Temporary Adoption Eff. July 1, 1996;  
 Eff. August 1, 1998;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

**01 NCAC 30G .0104 GENERAL PROCEDURES**

(a) Application Form - The SBC shall establish a form of application to be used by public owners requesting an exemption, which shall upon request be provided to public owners. A completed application shall contain all of the information necessary to enable the SBC to determine the appropriateness and merits of approving an exemption.

(b) Rules for Application - The SBC, upon request, shall provide public owners with a copy of the rules it adopts under the authority of G.S. 143-135.26(9).

(c) Review of Application:

- (1) The public owner shall submit the application to the State Construction Office, Attention: Director, Department of Administration, New Education Building, Suite 450, 301 North Wilmington Street, Raleigh, North Carolina 27601-2827. The Director shall review the application upon its receipt. If the Director determines that the application is not complete, he shall return the application to the public owner along with a written notice of the reasons for the return. Despite the return of an application, a public owner may request in writing to the Director that the SBC consider the application as originally submitted, and the notice of return to the public owner shall so state this option. An application shall be considered abandoned if it is returned pursuant to this section, and no further action is taken by the public owner to satisfy the reasons for its return.
- (2) Completed applications shall be considered within 60 days of receipt by the Director of the completed application. Once scheduled for consideration by the SBC, the public owner shall be given notice of the date, time and location of the SBC meeting at which the application shall be considered.
- (3) The SBC shall only accept written applications. After due consideration of these applications, the SBC shall take one of the following actions:
  - (A) Delay consideration of the application;
  - (B) Deny the application; or
  - (C) Approve the application.

Within five days of the SBC's action upon the application, notice of the same shall be sent to the public owner, and to the Director. Upon a delay of consideration pursuant to Paragraph (a) of this Rule, the SBC shall immediately request from the public owner or other person further information required in order to make a determination, or provide the public owner with notice of the reason for the delay.

(d) Approval of an Application - Approval of an application authorizes the public owner to utilize only the alternative contracting method as proposed by the public owner and no other method of contracting. Approval of an application shall be effective for a period to be determined by the SBC but not exceeding 12 months. Standards used by the SBC in determining the effective length of an approval shall include, but not be limited to, the request of the public owner, the experience of the public owner, the SBC and the Director with the approved method, the recommendation of the Director, and the nature of the project. The SBC may extend the effective time period upon good cause shown by the public owner for no more than an additional 12 months. Good cause must be shown by serious reasons including, but not limited to, unforeseen acts or events that delay the project, acts of war or terrorism, unavoidable casualties or other causes beyond the public owner's control. The extension of an effective

time period shall run from the last day of the prior effective time period. The effective time period shall run from the date the SBC approves the application.

(e) Conflicts of Interest - A member of the SBC is not qualified to vote upon any matter or influence any other member's vote upon any matter in which he has a conflict of interest. A conflict of interest, as related to members of the SBC having an interest in contracts authorized by the SBC, is defined in G.S. 143-135.28, and that definition applies to conflicts of SBC members having an interest in projects for which alternative contracting methods are authorized by the SBC.

(f) Public Records - The Director shall maintain a list of applications which states the name of the public owner, the name of the project, the project amount, a brief description of the category for which the exemption is sought, and a record of the SBC's action. Applications, and a record of the SBC's action upon those applications, shall be available for public inspection.

*History Note: Authority G.S. 143-135.26;  
Temporary Adoption Eff. July 1, 1996;  
Eff. August 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30G .0105 CRITERIA FOR CONSIDERATION**

(a) General Considerations - Applications shall be subject to the following general considerations which the SBC shall utilize in reviewing all applications:

- (1) Whether the public owner has adequately justified that the requested exemption is applicable to the project.
- (2) Whether under the circumstances presented the project can be reasonably completed under the methods authorized under G.S. 143-128, and if not, whether the public owner has adequately demonstrated that the proposed alternative contracting method is necessary.
- (3) Whether the exemption sought is appropriate and in the public's interest.
- (4) Whether the public owner has been responsible in the pre-planning stages of the project.

(b) Criteria for Exemptions - The following criteria describe circumstances where the SBC recognizes that a project may not be able to be reasonably completed under the methods authorized by G.S. 143-128, and where the use of an alternative contracting system, not otherwise authorized by G.S. 143-128, may be appropriate and in the public's interest:

- (1) Special Technology or Equipment - The project involves the erection or construction of special or unique technology or equipment whose vendor requires that its services be purchased in conjunction with the technology or equipment; or the vendor guarantees the technology or equipment only if its services are purchased in conjunction with the technology or equipment.
- (2) Unusual Complexity - The project involves one or more of the following conditions:
  - (A) very specialized or complex type of construction involving unconventional construction techniques or materials, or unusual working conditions;
  - (B) major renovations or an addition to an existing facility requiring continuous coordination of occupied programs or operations necessary for the protection of public health or safety; or
  - (C) extensive repairs, renovations or an addition to a major building or facility listed either in the North Carolina or Federal Register of Historic Properties.
- (3) Accelerated Schedule - A fast track schedule is required due to actual or impending judicial intervention by means of a State or Federal court order, or to address actual or impending regulatory mandates or citation for noncompliance.

*History Note: Authority G.S. 143-135.26;  
Temporary Adoption Eff. July 1, 1996;  
Eff. August 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## SUBCHAPTER 30H – MEDIATED SETTLEMENT CONFERENCES

### SECTION .0100 – INITIATING MEDIATED SETTLEMENT CONFERENCES

#### 01 NCAC 30H .0101 PURPOSE OF MANDATORY SETTLEMENT CONFERENCES

Pursuant to G.S. 143-128 (f1) and 143-135.26(11), these Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

*History Note:* Authority G.S. 143-135.26 (10), (11); S.L. 2001-496, s. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### 01 NCAC 30H .0102 INITIATING THE DISPUTE RESOLUTION PROCESS

(a) Any party to a public construction contract governed by G.S. 143, Article 8 and identified in G.S. 143-128 (f1) and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least fifteen thousand dollars (\$15,000) may submit a written request to the public owner for mediation of the dispute.

(b) Prior to submission of a written request for mediation to the public owner, the party requesting mediation:

- (1) If a prime contractor, it must first submit its claim to the Project Designer for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit his written request for mediation to the public owner.
- (2) If the party requesting mediation is a subcontractor, it must first submit its claim to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's informal involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to the public owner.
- (3) If the party requesting mediation is the Project Designer, then it must first submit its claim to the public owner to resolve. If the dispute is not resolved with the public owner's informal involvement, then the Project Designers' dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the public owner for mediation.

*History Note:* Authority G.S. 143-135.26(10) and (11); S.L. 2001-496, Sec. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### SECTION .0200 – SELECTION OF MEDIATOR

#### 01 NCAC 30H .0201 SELECTION OF MEDIATOR

(a) The parties may select a mediator certified pursuant to Paragraph (b) of this Rule. The requesting party shall file with the State Construction Office (hereinafter collectively referred to as the "SCO") if a State project or public owner, if a non-State project, a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

(b) All mediators in the Formal Dispute Resolution Program shall be certified in accordance with the rules certifying mediators in Superior Court in North Carolina except when otherwise allowed by the SCO or public owner upon the request of the parties to the mediation. When selecting mediators, the parties may designate a

preference for mediators with a background in construction law or public construction contracting. Such preferences are not mandatory under these Rules.

(c) The parties may select a mediator who does not meet the certification requirements of these Rules. However, all mediators gain the consent of the SCO or public owner in accordance with these Rules to mediate any dispute.

(d) If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall so notify the SCO or public owner and request, on behalf of the parties, that the SCO or public owner appoint a mediator. The request for appointment shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, the SCO or public owner shall appoint a certified attorney mediator. If no preference is expressed, the SCO or public owner may appoint a certified attorney mediator or a certified non-attorney mediator.

*History Note:* Authority G.S. 143-135.26(10) and (11); S.L. 2001-496, Sec. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30H .0202 MEDIATION AGREEMENT**

(a) Upon selection of the mediator, the parties shall enter into a mediation agreement. The mediation agreement shall include terms governing the time, place, and scope of the mediation. The agreement shall also include terms regarding the compensation, disqualification, and removal of the mediator.

(b) The deadline for completion of the mediation shall be 60 days after the execution of the mediation agreement. Parties are free to extend the mediation deadline by mutual agreement.

*History Note:* Authority G.S. 143-135.26 (10) and (11); S.L. 2001-496, Sec. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30H .0203 APPOINTMENT OF MEDIATOR BY THE SCO** **01 NCAC 30H .0204 MEDIATOR INFORMATION DIRECTORY** **01 NCAC 30H .0205 DISQUALIFICATION OF MEDIATOR**

*History Note:* Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Temporary Adoption Expired November 20, 2003.

### **SECTION .0300 – THE MEDIATED SETTLEMENT CONFERENCE**

#### **01 NCAC 30H .0301 WHERE CONFERENCE IS TO BE HELD**

Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the project is located. The mediator shall be responsible for reserving a place for the conference and for giving notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

*History Note:* Authority G.S. 143-135.26(10) and (11); S.L. 2001-496, Sec. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30H .0302 WHEN CONFERENCE IS TO BE HELD**

The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.

*History Note:* Authority G.S. 143-135.26(10), (11); S.L. 2001-496, s. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30H .0303 REQUEST TO EXTEND DEADLINE FOR COMPLETION**  
**01 NCAC 30H .0304 RECESSES**  
**01 NCAC 30H .0305 NO CAUSE FOR DELAY**

*History Note:* Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Temporary Adoption Expired November 20, 2003.

## **SECTION .0400 – DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS**

### **01 NCAC 30H .0401 ATTENDANCE**

- (a) All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution shall attend the mediation. Failure of a party to a construction contract dispute to attend the mediation shall result in the public owner's withholding of monthly payment to that party until such party attends the mediation.
- (b) Only physical attendance, and not attendance by telephone or other electronic means, shall constitute attendance. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
- (c) Attorneys on behalf of parties may attend the mediation but are not required to do so.
- (d) Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

*History Note:* Authority G.S. 143-135.26(10), (11); S.L. 2001-496, s. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30H .0402 FINALIZING AGREEMENT**

If an agreement is reached in the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel, insurance carriers and bonding companies, if any.

*History Note:* Authority G.S. 143-135.26(10), (11); S.L. 2001-496, s. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30H .0403 PAYMENT OF FEE**

The mediation fee shall be paid in accordance with G.S. 143-128 (f1).

*History Note:* Authority G.S. 143-135.26(10), (11); S.L. 2001-496, s. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30H .0404 FAILURE TO COMPENSATE MEDIATOR**

- (a) Any party's failure to compensate the mediators shall subject that party to a withholding of said amount of money from the party's monthly payment by the public owner.
- (b) If the public owner is a party to the mediation and it fails to compensate the mediator, it shall be subject to a civil cause of action from the mediator.

*History Note:* Authority G.S. 143-135.26(10) and (11); S.L. 2001-496, Sec. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **SECTION .0500 – AUTHORITY AND DUTIES OF MEDIATORS**

### **01 NCAC 30H .0501 AUTHORITY OF MEDIATOR**

- (a) Control of Conference. The mediator shall be in control of the conference and the procedures to be followed.
- (b) Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications with a participant may occur shall be disclosed to all other participants at the conclusion of the communications.
- (c) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

*History Note:* Authority G.S. 143-135.26(10), (11); S.L. 2001-496, s. 14(b);  
Temporary Adoption Eff. July 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30H .0502 DUTIES OF MEDIATOR**

- (a) The mediator shall define and describe the following at the beginning of the conference:
  - (1) The process of mediation;
  - (2) The difference between mediation and other forms of conflict resolution;
  - (3) The costs of the mediated settlement conference;
  - (4) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
  - (5) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
  - (6) Whether and under what conditions communications with the mediator shall be held in confidence during and after the conference;
  - (7) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1);
  - (8) The duties and responsibilities of the mediator and the participants; and
  - (9) That any agreement reached shall be reached by mutual consent.
- (b) Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (c) Declaring Impasse. It is the duty of the mediator to determine that an impasse exists and that the conference shall end.
- (d) Reporting Results of Conference. The mediator shall report to the SCO or public owner within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform the SCO or public owner of the absence of any party to have been absent from the mediated settlement conference without permission. The SCO or public owner may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
- (e) Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the rules. Deadlines for completion of the conference shall be observed by the mediator unless said time limit is changed by a written order of the SCO or public owner.

*History Note:* Authority G.S. 143-135.26(10), (11); S.L. 2001-496, s. 14(b);

*Temporary Adoption Eff. July 1, 2002;*  
*Eff. August 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **SECTION .0600 – COMPENSATION OF THE MEDIATOR**

##### **01 NCAC 30H .0601      COMPENSATION OF THE MEDIATOR**

*History Note:      Authority G.S. 143-135.26(11); S.L. 2001-496, Sec. 14(b);*  
*Temporary Adoption Eff. July 1, 2002;*  
*Temporary Adoption Expired November 20, 2003.*

#### **SECTION .0700 – MEDIATOR CERTIFICATION**

##### **01 NCAC 30H .0701      MEDIATOR CERTIFICATION**

*History Note:      Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b);*  
*Temporary Adoption Eff. July 1, 2002;*  
*Temporary Adoption Expired November 20, 2003.*

#### **SECTION .0800 – RULE MAKING**

##### **01 NCAC 30H .0801      RULE MAKING**

*History Note:      Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b);*  
*Temporary Adoption Eff. July 1, 2002;*  
*Temporary Adoption Expired November 20, 2003.*

#### **SECTION .0900 – DEFINITIONS**

##### **01 NCAC 30H .0901      DEFINITIONS**

*History Note:      Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b);*  
*Temporary Adoption Eff. July 1, 2002;*  
*Temporary Adoption Expired November 20, 2003.*

#### **SECTION .1000 – TIME LIMITS**

##### **01 NCAC 30H .1001      TIME LIMITS**

*History Note:      Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b);*  
*Temporary Adoption Eff. July 1, 2002;*  
*Temporary Adoption Expired November 20, 2003.*

### **SUBCHAPTER 30I - MINORITY BUSINESS PARTICIPATION GOAL**

#### **SECTION .0100 - GOOD FAITH EFFORTS**

##### **01 NCAC 30I .0101      POLICY**

Each public entity which places a public construction project out for bid and which is subject to G.S. 143-128.2 shall require bidders to undertake good faith efforts to recruit minority business participation in the project. Bidders must earn at least 50 points from the good faith efforts listed in Rule .0102, or comply with the requirements of G.S. 143-



128.2 (c)(1)(a), in order for their bids to be considered responsive. Notwithstanding this Rule, the public entity may require that additional good faith efforts be taken, as indicated in its bid specifications.

*History Note: Authority G.S. 143-128.2(f), S.L. 2001-496, s. 3.1, 14(b).  
Temporary Adoption Eff. August 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30I .0102 POINT VALUES FOR GOOD FAITH EFFORTS UNDERTAKEN.**

Good faith efforts and their values include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. Value = 10 points.
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. Value = 10 points.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. Value = 15 points.
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. Value = 10 points.
- (5) Attending any prebid meetings scheduled by the public owner. Value = 10 points.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. Value = 20 points.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. Value = 15 points.
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. Value = 25 points.
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. Value = 20 points.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = 20 points.

*History Note: Authority: G.S. 143-128.2(f), S.L. 2001-496, s. 3.1, 14(b);  
Temporary Adoption Eff. August 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **SECTION .0200 – RESERVED FOR FUTURE CODIFICATION**

#### **SECTION .0300 – RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN PUBLIC CONSTRUCTION CONTRACTS**

##### **01 NCAC 30I .0301 SCOPE**

The rules in this Section apply to minority business participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on State and local government construction projects as defined in G.S. 143-128.2(a).

*History Note: Authority G.S. 143-128.3(e); 143-128.2;  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30I .0302 DEFINITIONS**

As used in this section and G.S. 143-128.2 and G.S. 143-128.3:

- (1) "Bidder" means any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
- (2) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
- (3) "Contractor" means any person, firm, partnership, corporation, association, or joint venture which has contracted with the State of North Carolina to perform construction work or repair.
- (4) "Designer" means any person, firm, partnership, or corporation, which has contracted with the State of North Carolina to perform architectural or engineering work.
- (5) "HUB Office" means the North Carolina Department of Administration Office for Historically Underutilized Businesses.
- (6) "Owner" means the State of North Carolina, through the Agency/Institution and public entities named in the contract.
- (7) "Public Entity" means the State of North Carolina and all public subdivisions and local governmental units thereof.
- (8) "SCO" means the North Carolina Department of Administration State Construction Office.
- (9) "State Construction Project" means all projects within the jurisdiction of the State Construction Office pursuant to G.S. 143-341(3); including any State Agency project, Community College's project in the amount of three hundred thousand dollars (\$300,000) or more, and University System's project in the excess of two million dollars (\$2,000,000).
- (10) "Subcontractor" means a firm under contract with the prime contractor or construction manager at risk for supplying materials, labor, or materials and labor.

*History Note: Authority G.S. 143-128.3(e);  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30I .0303 ADJUSTMENTS TO GOAL**

The Secretary shall use the preceding year's minority business participation and the availability of businesses in each category as indicated by the firms identified as minority businesses by the Department of Administration in identifying appropriate percentage goals as required by G.S. 143-128.2(a).

*History Note: Authority G.S. 143-128.3(e); 143-128.2(a);  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30I .0304 OFFICE FOR HISTORICALLY UNDERUTILIZED BUSINESSES RESPONSIBILITIES**

(a) Interested businesses may register as a minority business as defined in G.S. 143-128.2(g). The information provided by the minority business shall be used by the HUB Office to:

- (1) Identify those areas of work for which there are minority businesses, and assist those public entities who are in the process of developing a minority business outreach plan for a particular project.
- (2) Make available to interested parties a list of registered minority business contractors and subcontractors.
- (3) Maintain a current list of minority businesses based upon information provided by the minority businesses.

(b) The HUB Office shall also:

- (1) Provide training and technical assistance to minority businesses on how to identify and obtain contracting and subcontracting opportunities through the State Construction Office and other public entities.
- (2) Provide training and technical assistance to public entities on how to identify and obtain minority contractor and subcontractor participation on projects subject to the goal requirements of G.S. 143-128.2.
- (3) Develop positive relationships with North Carolina trade and professional organizations by providing periodic meetings, such as networking and information sessions, obtaining input and feedback regarding minority business issues, legislation and policies, to improve the ability of minority businesses to participate in State construction projects.
- (4) Monitor public entity compliance with the goal requirements of G.S. 143-128.2.
- (5) Review and monitor corrective action plans for those public entities found to be out of compliance with G.S. 143-128.2.

*History Note: Authority G.S. 143-128.3(e); 143-128.2;  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30I .0305 STATE CONSTRUCTION OFFICE RESPONSIBILITIES**

On State Construction Projects, the State Construction Office shall:

- (1) Attend the scheduled prebid conference, if requested, to clarify requirements of the General Statutes regarding minority-business participation, including the bidders' responsibilities.
- (2) Review the apparent low bidders' statutory compliance with the requirements listed in the proposal, if the bid is to be considered as responsive, prior to award of contracts. The State may reject any or all bids and waive informalities pursuant to G.S. 143-129.
- (3) Review minority business requirements at the Preconstruction conference.
- (4) Monitor contractors' compliance with minority business requirements in the contract documents during construction.
- (5) Resolve protests and disputes arising from implementation of the minority business participation outreach plan, in conjunction with the HUB Office.

*History Note: Authority G.S. 143-128.3(e);  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30I .0306 OWNER REQUIREMENTS**

(a) Before awarding a contract, an owner shall:

- (1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and implement outreach efforts to encourage minority business participation in these projects. The plan shall include education, recruitment, and interaction between minority businesses and non-minority businesses.
- (2) Attend the scheduled prebid conference and explain the minority goals and objectives of the State and specific to the owner.
- (3) At least 10 business days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office for Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include:
  - (A) A description of the work for which the bid is being solicited.
  - (B) The date, time, and location where bids are to be submitted.
  - (C) The name of the individual within the owner's organization who will be available to answer questions about the project.
  - (D) Where bid documents may be reviewed.

- (E) Any special requirements that may exist.
  - (4) Utilize media likely to inform potential minority businesses of the bid being sought.
  - (5) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
  - (6) Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award.
  - (7) Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.
  - (8) Forward documentation showing evidence of implementation of Owner's requirements, Subparagraphs (a)(1) through (a)(7) of this Rule, to the State Construction Office and the HUB Office upon request.
- (b) After a contract has been awarded an owner shall:
- (1) Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
  - (2) Submit the report to the HUB Office as required by G.S. 143-128.3(a).
- (c) All public entities that contract with a construction manager at risk shall report to the Office for Historically Underutilized Businesses the items enumerated in G.S. 143-64.31(b). The report shall include:
- (1) The owner approved minority business outreach plan of the construction manager at risk selected; and
  - (2) Documentation regarding the means by which minority businesses were contacted to solicit their participation in bid proposals if the 10% goal is not achieved.

*History Note:* Authority G.S. 143-128.2(e); 143-128.3(e); 143-133.1(a);  
 Eff. February 1, 2006;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30I .0307 DESIGNER REQUIREMENTS**

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer shall:

- (1) Attend the scheduled prebid conference to explain minority business requirements to the prospective bidders.
- (2) Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities and provide documentation of this assistance for the owner's records.
- (3) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals and forward the documentation to the owner in support of meeting the requirements.
- (4) Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) prior to recommendation of award.
- (5) During construction phase of the project, review payment applications for compliance with minority business utilization commitments and submit documentation that identifies payments to minority businesses along with monthly pay applications to the owner. Additionally, on State Construction Projects, forward copies to the State Construction Office.
- (6) Forward documentation showing evidence of implementation of Items (1) through (5) of this Rule to the owner, State Construction Office and HUB Office upon request.

*History Note:* Authority G.S. 143-128.3(e); 143-128.2;  
 Eff. February 1, 2006;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30I .0308 CONTRACTOR REQUIREMENTS**

This Rule applies to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods. These requirements apply to all contractors performing as contractors and first-tier subcontractors under construction manager at risk on state projects. The contractors shall:

- (1) Attend the scheduled prebid conference.
- (2) Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
- (3) At least 10 business days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification shall include:
  - (a) A description of the work for which the bid is being solicited.
  - (b) The date, time and location where bids are to be submitted.
  - (c) The name of the individual within the company who shall be available to answer questions about the project.
  - (d) Where bid documents may be reviewed.
  - (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify no less than three minority businesses within a 75 mile radius of the project.

- (4) During the bidding process, comply with the contractor(s) requirements listed in the owner's minority business participation outreach plan.
- (5) Identify on the bid, the minority businesses that will be utilized on the project with the corresponding total dollar value of the bid and an affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).
- (6) Forward documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor requirements to the State Construction Office and HUB Office upon request.
- (7) Upon being named the apparent low bidder, the Bidder shall provide one of the following to the Public Owner:
  - (a) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or
  - (b) if the percentage is not equal to the applicable goal, then an affidavit of all good faith efforts taken to meet the goal.

Failure to comply with the requirements of this Item shall be grounds for rejection of the bid and award to the next lowest responsible responsive bidder.

- (8) During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing of the circumstances involved. Additionally, on State Construction Projects, notify the State Construction Office, and the Director of the HUB Office in writing, of the circumstances involved. The prime contractor shall make good faith efforts to replace a minority business subcontractor with another minority business subcontractor.
- (9) If during the construction of a project additional subcontracting opportunities become available, make good faith efforts to solicit bids from minority businesses.

*History Note: Authority G.S. 143-128.3(e); 143-128.2(c);  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 301 .0309 MINORITY BUSINESS RESPONSIBILITIES**

(a) Minority businesses seeking to be counted toward the minority business participation goals of G.S. 143-128.2 shall be certified or designated as minority business by the Department of Administration HUB Office or another certifying agency of the State of North Carolina, a local unit of government, or The Carolinas Minority Suppliers Development Council.

(b) Minority and HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

- (1) Attending the scheduled prebid conference.
- (2) Responding promptly whether or not they wish to submit a bid when contacted by owners or bidders.

- (3) Attending training and contractor outreach sessions given by owners, contractors and state agencies, when feasible.
- (4) Participating in Mentor/Protégé programs, training, or other business development programs offered by owners, contractors or state agencies.
- (5) Negotiating in good faith with owners or contractors.

*History Note:* Authority G.S. 143-128.3(e);  
Eff. March 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30I .0310 DISPUTE PROCEDURES**

Any business disputes arising under these Rules shall be resolved as set forth in G.S. 143-128(f1).

*History Note:* Authority G.S. 143-128.3(e); 143-128(f1);  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **SUBCHAPTER 30J - CONSTRUCTION MANAGER-AT-RISK SELECTION PROCEDURES**

#### **SECTION .0100 - GENERAL PROVISIONS**

#### **01 NCAC 30J .0101 AUTHORITY**

*History Note:* Authority G.S. 143-135.26; S.L. 2001-496, s. 11;  
Temporary Adoption Eff. February 1, 2003;  
Temporary Adoption Expired December 18, 2003.

#### **01 NCAC 30J .0102 POLICY**

The State Building Commission shall select construction manager-at-risk for State capital improvement projects as defined in G.S. 143-128.1, based on criteria contained in this Subchapter and make available to every firm, licensed as a general contractor in the State of North Carolina, the opportunity to be considered for providing construction management-at-risk services for those departments and agencies under its jurisdiction. The State Building Commission shall select a construction manager-at-risk for State capital improvement project who is in compliance with the minority business participation requirements as prescribed in G.S. 143-128.2. The construction manager-at-risk shall use a standard form of contract authorized by the SBC for the public owner, construction manager-at-risk, and first-tier subcontractor.

*History Note:* Authority: G.S. 143-135.26;  
Temporary Adoption Eff. February 1, 2003;  
Eff. March 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30J .0103 DEFINITIONS**

For purposes of this subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual or designee authorized by each funded agency to coordinate all capital improvement projects and related matters for the agency with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of this Subchapter may have other titles within his agency but shall carry out the duties assigned by the rules in this Subchapter to the capital projects coordinator.

- (2) "Construction Manager-at-Risk" means a person, corporation, or entity that provides construction management-at-risk services.
- (3) "Construction Management-at-Risk Services" means services provided by a person, corporation, or entity that:
  - (a) provides construction management services for a project throughout the preconstruction and construction phases,
  - (b) who is licensed as a general contractor, and
  - (c) who guarantees the cost of the project.
- (4) "First-Tier Subcontractor" means a subcontractor who contracts directly with the Construction Manager-at-Risk.
- (5) "Contact person" means the person named in the public advertisement who shall be the Capital Projects Coordinator or his/her designee.
- (6) "Funded agency" means the department, agency, authority or office that is named in the legislation appropriating funds for the design and construction project.
- (7) "Using agency" means the subdivision of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus or similar body, as determined by the administrative head of the funded agency.
- (8) "Minority Business" means a business:
  - (a) in which at least 51% is owned by one or more minority persons, or in the case of corporation, in which at least 51% of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
  - (b) of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- (9) "Socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

*History Note:* Authority: G.S. 143-135.26;  
 Temporary Adoption Eff. February 1, 2003;  
 Eff. March 1, 2004;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30J .0201 PROJECT DESCRIPTION**

Each Capital Projects Coordinator shall provide the State Construction Office with a written description of the construction management-at-risk services desired, the program or scope of work, schedule requirements, amount of authorized funds, owner agency responsible for the project, name and contact information of the owner's project representative, link to owner agency's website where RFP and project detail may be obtained, date RFP to be published, closing date, time and location contractor letters of interest are to be submitted and any special licenses, skills, or experience of the contractor not already listed for each project requiring construction management-at-risk services. This information shall be provided to the State Construction Office for publication on State Construction Office website. The Capital Projects Coordinator shall initiate the Construction Manager-at-Risk selection process and shall make his/her best effort to enable the completion of the selection process within 60 days of the date of the above notification.

*History Note:* Authority G.S. 143-135.26; S.L. 2001-496, s. 11;  
 Temporary Adoption Eff. February 1, 2003;  
 Eff. March 1, 2004;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

#### **01 NCAC 30J .0202 PUBLIC ANNOUNCEMENT**

(a) Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for construction management-at-risk services, a designated contact person in the using agency and the closing date on the State Construction Office website. This public announcement shall be published prior to Construction Manager-at-Risk selection.

(b) The closing date for being considered for construction management-at-risk services shall be at least 21 days from date of publication on the State Construction Office website. Responses to Request For Proposal (RFP) for each project must be received by the Capital Project Coordinator prior to a firm's being considered for construction management-at-risk services.

*History Note:* Authority G.S. 143-135.26;  
Temporary Adoption Eff. February 1, 2003;  
Eff. March 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **SECTION .0300 - SELECTION OF CONSTRUCTION MANAGERS-AT-RISK**

### **01 NCAC 30J .0301 CONSTRUCTION MANAGER-AT-RISK QUALIFICATIONS**

All firms desiring to provide construction management-at-risk services shall submit all information required in the RFP for the public owner's review and evaluation. Firms shall submit evidence of compliance with the requirements of the RFP. Each firm shall meet the requirements of the RFP prior to being considered by the pre-selection committee as one of the firms most qualified to perform construction manager-at-risk services. Failure of any firm to furnish all required information in the RFP shall disqualify the firm from consideration.

*History Note:* Authority G.S. 143-135.26;  
Temporary Adoption Eff. February 1, 2003;  
Eff. March 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30J .0302 PRE-SELECTION COMMITTEE**

A pre-selection committee shall be established for all projects requiring construction management-at-risk services. The pre-selection committee shall consist of at least the capital projects coordinator, a representative of the using agency and one representative from the State Construction Office. At least one member of all pre-selection committees shall be a registered architect, licensed engineer or licensed contractor. The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The capital projects coordinator shall state in his project description that the rules for public announcement and selection have been followed or shall state full particulars if exceptions have been taken.

*History Note:* Authority G.S. 143-135.26; S.L. 2001-496, s. 11;  
Temporary Adoption Eff. February 1, 2003;  
Eff. March 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **01 NCAC 30J .0303 SELECTING CRITERIA**

In selecting the three firms to be presented to the SBC, the pre-selection committee shall take into consideration in the evaluation of the Proposals such factors as:

- (1) Workload that is able to accommodate the addition of this project.
- (2) Record of successfully completed projects of similar scope without legal or technical problems.
- (3) Previous experience with the public owner, a good working relationship with owner representatives, projects completed in a timely manner and an acceptable quality of work.
- (4) Key personnel that have appropriate for contract experience and qualifications.
- (5) Relevant and easily understood graphic or tabular presentations.
- (6) Completion of - Construction Manager-At-Risk projects in which there were few differences between the guaranteed maximum price and final cost.
- (7) Projects that were completed on or ahead of schedule.
- (8) Recent experience with project costs and schedules.



- (9) Construction administration capabilities.
- (10) Proximity to and familiarity with the area where the project is located.
- (11) Quality of compliance plan for minority business participation as required by G.S. 143-128.2.

*History Note:* Authority G.S. 143-135.26;  
 Temporary Adoption Eff. February 1, 2003;  
 Eff. March 1, 2004;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30J .0304 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR UNC SYSTEM PROJECTS**

In selecting Construction Manager-at-Risk for its projects, the UNC system shall comply with the rules in this Subchapter except that:

- (1) the pre-selection committee need not include a representative of the State Construction Office; and
- (2) the final selection of Construction Manager-at-Risk shall be made by the Board of Trustees of the funded institution.

*History Note:* Authority G.S. 143-135.26;  
 Temporary Adoption Eff. February 1, 2003;  
 Eff. March 1, 2004;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30J .0305 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR OTHER THAN UNC SYSTEM PROJECTS**

(a) Upon receipt of a letter from the capital projects coordinator listing three firms in priority order along with recommendations and selection information, the secretary of the SBC, upon determination that all information has been submitted, shall place the request for consideration on the agenda for the next SBC meeting.

(b) The capital projects coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the rules in this Subchapter have been followed, the SBC shall:

- (1) Affirm the selection of the firms in the priority order recommended by the agency; or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

*History Note:* Authority G.S. 143-135.26;  
 Temporary Adoption Eff. February 1, 2003;  
 Eff. March 1, 2004;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**01 NCAC 30J .0306 CONTRACT NEGOTIATION**

After the three firms have been notified of the selection action by the SBC or the University of North Carolina, a representative from the State Construction Office, the capital projects coordinator, and a representative from the using agency shall discuss with the first ranked construction manager-at-risk services and information about the project. The State Construction Office shall request in writing a detailed fee proposal from the first ranked Construction Manager-at-Risk. The State Construction Office in coordination with the capital projects coordinator and the using agency shall attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked Construction Manager-at-Risk, the process shall be repeated with the third-ranked Construction Manager-at-Risk. If a fee still cannot be agreed upon, the SBC shall review the history of negotiations and make determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation

with the firms shall be carried out in the original selection order, or a call shall be made for the capital projects coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process shall continue until a fee has been determined that is agreed to by the State Construction Office, the using agency and the Construction Manager-at-Risk. Following execution of the contract, the State Construction Office shall publish on the State Construction Office website, the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.

*History Note: Authority G.S. 143-135.26;  
Temporary Adoption Eff. February 1, 2003;  
Eff. March 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*