



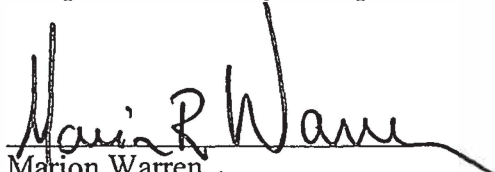
Judicial Branch

Procurement Policy

Pursuant to the authority in N.C.G.S. §§7A-343 and 143-336, the following Policy is adopted for purchases made and contracts entered by the North Carolina Judicial Department (Branch or Judicial Branch).

Whenever it is deemed by the Director (Director) of the Administrative Office of the Courts (AOC), his designee, or the General Services Officer (GSO) that it is in the best interest of the Branch to use the purchase and contract services of the North Carolina Department of Administration (DOA) Division of Purchase and Contract (P&C) or the Department of Information Technology (DIT), the Branch will do so in accordance with the laws and rules governing those purchases. When it is deemed by the Director, his designee or the GSO that it is in the best interest of the Branch to purchase or contract without the assistance of P&C or DIT the procedures outlined herein will be followed.

Adopted this 1st day of September, 2016.


Marion Warren
Director

Subchapter 1A - Procurement Services

Section .0100 - Scope and Definitions

.0101 Responsibility

The Director is charged with the responsibility of providing for the purchase and contract requirements of the Branch. The administration of this program is delegated to the GSO, who reports to the Senior Deputy Director.

.0102 Scope and Application

Procurement Services are administered by the Procurement Services (PS) Section of the General Services Division (GSD) and shall be based on sound competitive procurement procedures, and shall include the following:

- (1) Acquisition of equipment, materials and supplies for the Branch;
- (2) Acquisition of printing, rentals, leases, and services for the Branch;
- (3) Establishment and enforcement of purchase specifications;
- (4) Inspection and testing of products; and,
- (5) Review of no-cost contracts.

For the purposes of this Policy, Branch is defined as all of those entities which now, or in the future, fall within the budget of the AOC.

.0103 Location

The principal offices of PS are located at the North Carolina Judicial Center (Judicial Center), 901 Corporate Center Drive, Raleigh, NC 27607.

.0104 Forms; Procedures; Terms and Conditions

PS establishes procedures for acquiring commodities, printing and services and prescribes forms, terms and conditions and advertising requirements applicable to such actions. The procedures, forms, consistent language, terms and conditions, and advertising requirements shall be established taking into consideration market conditions and trends, legal requirements, and factors determined to be in the best interest of the Branch.

.0105 Definitions

- (1) **“Agency Specific Term Contract”** also known as indefinite quantity or requirements contracts, are used generally to establish suppliers and prices of a given commodity, group of commodities, printing, or services for a period of time without guaranteed quantities being specified. Term contracts for the Branch are handled by PS. The Branch must purchase commodities, printing or services from an Agency Specific Term Contract, once it is awarded. PS shall determine, in its sole discretion, if there are times when it is in the best interest of the Branch not to buy off of an Agency Specific Term Contract.
- (2) **“Best Value Procurement”** is a competitive, negotiated procurement where the Branch reserves the right to select the most advantageous Offer by evaluating and

comparing factors in addition to cost or price. A Best Value Procurement enables the Branch to purchase technical superiority even if it means paying a Premium Price.

- (3) “**Buyer**” is a Procurement Specialist, who is an employee of PS.
- (4) “**Commodity(ies)**” is equipment, materials, or supplies. It does not include printing or services.
- (5) “**Contractor**” or “**Vendor**” is the entity awarded a contract.
- (6) “**Competitive Range**” is the range of all of the most highly rated Offers as determined by the evaluation committee. The range shall be sufficient to establish adequate competition as determined by the GSO or his designee.
- (7) “**Consultant Services**” are work or tasks performed by State employees or independent contractors possessing specialized knowledge, experience, expertise, and professional qualifications to investigate assigned problems or projects, and to provide counsel, review, advice, or analysis in formulating or implementing improvements in programs or services. This includes, but is not limited to, the organization, planning, directing, control, evaluation, and operation of a program, entity or the Branch.
- (8) “**Cost Proposal**” is the pricing information submitted by an Offeror in response to a RFP. In a Two-Step Proposal Process, the Cost Proposal is submitted with the Technical Proposal but the Cost Proposal is in a separate sealed envelope and is not opened unless the Offeror’s Technical Proposal is deemed acceptable.
- (9) “**General Services Division**” or (GSD) is the General Services Division of the NCAOC.
- (10) “**General Services Officer**” or (GSO) is the designee of the Director. The Procurement Services Manager (PSM) shall have the same authority as the GSO for contract awards, execution of agreements and other procurement decisions. Any reference to the Director shall also mean the GSO and the PSM.
- (11) “**North Carolina Administrative Office of the Courts**” or (NCAOC) is the administrative arm of the Judicial Branch.
- (12) “**Offer**” is a response to an Invitation for Bids (IFB), Request for Proposals (RFP), Negotiation, or Request for Quotation (RFQ).
- (13) “**Offeror**” is the entity that submits an Offer in response to a Branch Solicitation Document or a response to a Negotiation.
- (14) “**Personal Services**” are services provided by a professional individual (person) on a temporary or occasional basis, including, but not limited to, services provided by a doctor, dentist, attorney, architect, professional engineer, scientist, or performer of the fine arts. The individual must use his/her professional skills to perform a professional task. A personal service may also be a Consulting Service.
- (15) “**Premium Price**” is the difference between the price of the lowest priced Offer and the one that the Branch believes offers the Best Value.
- (16) “**Procurement Services**” or “PS” is the procurement services section of the GSD of the NCAOC.
- (17) “**Procurement Services Manager**” or (PSM) is the manager of the procurement services section of the General Services Division of the NCAOC.

- (18) **“Public Funds”** are money from any source, including but not limited to State, federal, local, grants, donations, or gifts, which are deposited in bank accounts controlled by the Branch for the general support of the Branch.
- (19) **“Sealed Bid(s)”** is an Offer enclosed in a sealed envelope and submitted in response to a Solicitation Document. Sealed Bids that are received on or before the deadline date are generally opened at a stated time and place (usually in the presence of anyone who may wish to be present) and evaluated for award of a contract.
- (20) **“Service Contract”** is any agreement under which an independent contractor performs services requiring specialized knowledge, experience, expertise or similar capabilities for the Branch for compensation involving an expenditure of public funds.
- (21) **“Solicitation Document”** is an Invitation For Bids (IFB), Request For Proposals (RFP), Negotiation or Request For Quotes (RFQ).
- (22) **“State-Wide Term Contracts”** are contracts awarded by either the P&C or DIT for use by executive branch agencies. The Branch may, but is not required to purchase off of a State-Wide Term Contract. The decision to purchase off of a State-Wide Term Contract rests in the sole discretion of PS.
- (23) **“Technical Proposal”** is an Offeror’s response to a RFP that lists, defines, and explains the Offeror’s approach and plan to address the technical requirements of the RFP.
- (24) **“Trade Off Method”** is a source selection utilized when it is in the best interest of the Branch to consider award to other than the lowest priced Offer or the highest technically qualified Offer. For solicitations using a Trade Off source selection method, the following shall apply:
- a. All evaluation factors that will affect the contract award decision and their relative importance shall be clearly stated in the solicitation document.
 - b. Price shall be considered as an evaluation factor in the selection process. The solicitation shall state the importance or numerical weight of all evaluation factors including price.
 - c. Offers are ranked using the evaluation factors and their relative importance as defined in the Solicitation Document. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded off against other non-price factors. For example, an offer with the lowest price when compared to other offers would normally receive the best ranking in the price evaluation category. However, if other non-price factors received low rankings, the overall ranking of the offer would be reduced.
- (25) **“Two-Step Procurement Process”** is used to evaluate Offers submitted in response to most RFPs. In a Two-Step Procurement Process the Offeror’s Technical Proposal and Cost Proposal are submitted in separate sealed envelopes, which are then enclosed in a third sealed envelope, which is submitted to PS as the Offer.
- (26) **“Unauthorized Purchase”** If any Judicial Official or any employee of the Branch (together “Employee”) shall contract for the purchase or lease of supplies, materials, equipment, printing or services contrary to the provisions of this Policy

such contract shall be void and of no effect. If any Employee contracts for the purchase of any supplies, materials, equipment, printing or services contrary to the provisions of this Policy the Employee may be personally liable for the costs thereof and may be subject to discipline, up to and including, dismissal.

Subchapter 1B - Procurement Procedures

Section.0100 - Requisitioning

.0101 Procedure

Entities within the Branch shall request procurement actions of PS by means of an electronic request using either a Special Order Request through the NCAOC On-line Store or by submission of the Contractual and Solicitation Request Form.

.0102 Verbal Requests

Verbal or email requests (Verbal Requests) are not satisfactory substitutes for electronic requests except in emergencies. Electronic confirmation shall follow any such request not later than five (5) days after the Verbal Request.

.0103 Confidentiality

All information and documentation relative to the development of a contractual document, including, but not limited to, RFQ, IFB, RFP, waiver of competition or negotiations for a proposed procurement or contract shall be deemed confidential in nature, except as deemed necessary by the buyer to develop a complete solicitation document. Such material shall remain confidential until the award of the contract, if any.

Section .0200 - Specifications

.0201 Types of Specifications

There shall be two general types of specifications. A standard specification shall be originated and developed by PS. It shall be comprehensive in nature and intended for repeated use. The other type of specification shall be originated by the user and modified as necessary. Other types of specifications may be used, including but not limited to, "brand name or equal" or "brand specific".

.0202 Need

PS is authorized to inquire into the need for and the level of quality of the items and services requested.

.0203 Development of Specifications

- (1) A specification is intended for general use, applicable insofar as practicable to the needs of the Branch, and kept current by PS or the user, as appropriate. In formulating such a specification, advisory committees made up of personnel from various entities within the Branch and the private sector may be employed for advice and assistance. This type of specification may be offered for review and

comment by manufacturers and suppliers who may participate in future bidding on the items in question.

- (2) Buyers shall use specifications and requirements that reasonably satisfy the need, are not unduly restrictive, encourage competition in the open market, and result in the best possible contract for the commodity, printing or service.

.0204 North Carolina Products

The Branch shall, in any procurement process for foods, supplies, materials, equipment, or services, give preference as far as may be practicable to such items or services manufactured or produced in North Carolina. Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given surplus products or articles produced and manufactured by other State departments, institutions, or agencies available for distribution.

.0205 Confidentiality

All information relative to the development of a specification shall be deemed confidential until the award of contract, if any.

Section .0300 - Procurement Authorization and Procedures

.0301 Contracting Requirements

Except as stated otherwise in this Policy, all purchases involving the expenditure of Public Funds made by the Branch for commodities, and printing, shall comply with the following delegations and procedures:

- (1) Small Purchases. A small purchase is defined as the purchase of commodities, or printing, involving an expenditure of Public Funds of \$5,000.00 or less. The Branch Procurement Manual addresses the procedures for handling these purchases.
- (2) Other Purchases.
 - a. For purchases made by the Branch involving an expenditure of Public Funds over \$5,000.00:
 - i. Competition shall be solicited;
 - ii. Solicitation Documents requesting or inviting offers shall be issued;
 - iii. Solicitation Documents shall include standard language, including standard terms and conditions prepared by PS;
 - iv. The GSO, in his or her sole discretion, may require that a purchase between \$5,000.00 and \$10,000.00 be solicited using a Sealed Bid.
 - b. Sealed Bid(s) and public advertisement are required for any procurement having a dollar value in excess of \$10,000.00. The Branch will accomplish the required advertising by using the web site maintained by DOA for this purpose.

.0302 Methods of Source Selection

Competitive source selection may be conducted as follows:

- (1) Best Value Procurement Method:

- a. Procurement Document is developed and advertised consistent with other sections of this Policy.
 - b. Scheduled conferences or site visits are held in accordance with the Procurement Document.
 - c. Offers are received and a public bid opening is conducted. For solicitations that allow for negotiation after the receipt of offers, only the names of the responding bidders are revealed. Price information shall be made public after evaluation and award.
 - d. An evaluation committee evaluates offers in accordance with the evaluation factors stated in the Solicitation Document. For solicitations that include a Best Value ranking process, scoring and ranking may be determined by using any consistent rating methodology including adjectival, numerical or ordinal rankings, which process shall be included in the Procurement Document. Relative strengths, deficiencies, weaknesses, and risks supporting the evaluation shall be documented in the contract file. Evaluation factors may include, but are not limited to quality factors; delivery and implementation schedule; maximum facilitation of data exchange and systems integration; warranties, guarantees, and return policies; vendor financial stability; consistency of the proposed solution with the Branch's strategic program direction; effectiveness of the business solution and approach; industry and program experience; prior record of vendor performance; vendor expertise with similar projects; proven development methodologies and tools; and innovative use of technologies.
 - e. Clarifications, or negotiations may be conducted with Offerors after receipt of offers in accordance with instructions and procedures set forth in the Solicitation Document and as appropriate to the method source selection chosen. In those cases where negotiation is permitted by procedures set forth in the Solicitation Document, Offerors may be allowed to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer.
 - f. The evaluation committee shall determine a final ranking of all offers under consideration using only the criteria set forth in the Solicitation Document. All Offerors shall be ranked from most advantageous to least advantageous to the Branch.
 - g. Award shall be made to the responsive and responsible Offeror whose Offer is determined in writing to be the most advantageous to the Branch, using all evaluation factors set forth in the Solicitation Document.
 - h. The Trade-Off Method may be used in a Best Value Solicitation.
- (2) One-Step Procurement Method: If the lowest priced technically acceptable method is used, only clarifications are allowed. Award shall be made to the lowest and best Offer most advantageous to the Branch. When using the lowest price technically acceptable method, the following shall apply:
- (a) The evaluation factors that establish the requirements of acceptability shall be set forth in the Solicitation Documents. The Solicitation Documents shall specify that award will be made on the basis of the lowest evaluated

price of those Offers that meet or exceed the acceptability requirements for non-price factors.

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

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

3. Two-Step Procurement Method: The Technical Proposal and the Cost Proposal shall be received in PS on or before the bid opening date and time in order to be considered. The Technical Proposal is opened at the bid opening. The Cost Proposal is not opened at the bid opening. All timely received Technical Proposals are then evaluated for compliance with the RFP's technical requirements. The Cost Proposals of the Offerors whose Technical Proposals are deemed acceptable shall be publicly opened. The Cost Proposals from Offerors whose Technical Proposals are deemed unacceptable shall not be opened. The date and time of the Cost Proposal opening shall be furnished to all Offerors whose Cost Proposals will be opened at least two (2) working days prior to the opening. In the event that all of the Offerors whose Cost Proposals are to be opened waive their right to be present for the opening, the Cost Proposals may be immediately opened, the results tabulated, and at that time the tabulation shall become a public record.

.0303 Facsimile, Telephone, and Electronic Offers

Facsimile, telephone, and electronically transmitted Offers shall not be accepted in response to a Sealed Bid.

.0304 Recall of Offers

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

.0305 Public Opening

(1) Sealed Bids shall be publicly opened at the time, date and place identified in the Solicitation Document. At the time of opening, the names of the Offerors, the manufacturer(s) and catalog number(s) of the item(s) they have offered and the prices, deliveries, and payment terms they have submitted shall be tabulated and this tabulation shall become public record, except as provided in part (b) below.

(2) Under a Two-Step Procurement Process, the cost/price offer(s) shall not become public record until the technical offer(s) has been evaluated (first step) and then only those Offerors determined by the Branch to have acceptable technical offers shall have their cost/price offers opened (second step).

.0306 Late Offers, Modifications, Withdrawals

No late offer, late modification, or late withdrawal shall be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the action or inaction of Branch personnel. The Offeror shall have his offer delivered on time, regardless of the mode of delivery used.

.0307 Error/Clarification

When an offer appears to contain an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then considered and acted upon. Any action taken shall not prejudice the rights of the public or other Offerors. Where Offers are submitted substantially in accordance with the solicitation document but are not entirely clear as to intent or to some particular fact or where there are ambiguities, PS may seek and accept clarification from the Offeror, provided that, in doing so, no improvement in the Offeror's competitive position is permitted and no change is permitted in prices.

.0308 Extension of Acceptance Time

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

.0309 Evaluation

- (1) In determining the award of contracts, bona fide Offers shall be considered and evaluated. The evaluation criteria to be used in determining the award of contract shall be identified in the Solicitation Document.
- (2) An unexecuted offer or an offer without a delivery time shall be rejected.
- (3) During the period of evaluation and prior to an award, only the information provided in the tabulation is public record. Possession of offers, including any accompanying information submitted with the offers, shall be limited to persons who are responsible for handling the offers and accompanying information, and others deemed necessary by the Branch for the purpose of evaluation and award of contract. Offeror participation in the evaluation shall not be permitted. Any communication with an Offeror that may be necessary for the purpose of clarification of its offer shall be conducted by PS. After award of the contract, the complete file shall be available to any interested party with the exception of trade secrets subject to the provisions of section .1301 of this subchapter.

.0310 Notification of Award

If a solicitation is advertised through the web site of DOA, then notice of the resulting contract award will be posted on that web site. In addition, after contracts are awarded, successful Offerors shall be notified in writing, or electronically, by the Branch.

.0311 Lack of Competition

The purpose of soliciting offers is both to seek and obtain competition; the responsibility is dual. Where only a single offer is received or, otherwise, where reasonable and available competition is not obtained, the reason may be ascertained and made a matter of record.

.0312 Tabulations and Abstracts

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

.0313 Solicitation Documents

- (1) An alternate procurement method to the IFB is a RFP. A RFP may be handled as a Two-Step Procurement Process.
- (2) The Branch shall use the IFB or RFP for all solicitations valued at over \$10,000.00, except as provided for in Section .0400 of this subchapter. Any Solicitation Document used for this purpose shall require the Offerors to certify that each Offer is submitted competitively and without collusion.

.0314 Division of Requirements

Requirements shall not be divided for the purpose of avoiding the use of the appropriate procurement mechanism, based on the dollar value of the transaction. In the case of a group of similar or related items, the dollar value of the total transaction, and not that of any individual item shall govern.

.0315 Advertisement Requirements

- (1) When required, procurements shall be advertised at least once, at least 10 calendar days prior to the designated opening date. This advertisement will be accomplished by using the web site of the DOA.
- (2) Notwithstanding this section, if there is an attachment to a Solicitation Document that PS determines will not be transmitted electronically, then the solicitation document shall contain instructions which the Offeror may follow to obtain the attachment.

.0316 Mandatory Conference/Site Visits

- (1) When a Solicitation Document requires potential Offerors to attend a mandatory conference or site visit, the date, time, location, and other details of the conference or site visit shall be given in the Solicitation Document and in the advertisement.
- (2) If only one potential Offeror attends the mandatory conference/site visit, the conference/site visit may continue as planned, but the solicitation shall be cancelled immediately following the mandatory conference/site visit. If it is determined that there is no competition available, then the procurement may be handled as a waiver as permitted by this Policy.
- (3) Any and all questions by a potential Offeror regarding a Solicitation Document shall be addressed to the Procurement Specialist named on the Solicitation Document. Any and all revisions to the Solicitation Document shall be made only by written addendum from PS. Verbal communications from whatever source are of no effect.

Section .0400 - Rejection of Offers

.0401 Basis for Rejection

In soliciting Offers, any and all Offers received may be rejected in whole or in part, for any reason or for no reason. Basis for rejection may include, but not be limited to, the offer being deemed unsatisfactory as to quantity, quality, delivery, price or service

offered; the offer not complying with conditions of the Solicitation Document or with the intent of the proposed contract; lack of competitiveness by reason of collusion or otherwise or knowledge that reasonably available competition was not received; error(s) in the specification or indications that revisions would be to the Branch's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances which prevent the determination of the lowest responsible or most advantageous offer; any determination that rejection would be to the best interest of the Branch.

.0402 Public Record

The reason(s) for rejecting offers in whole or in part shall be a matter of public record.

.0403 Negotiation

If the Branch does not receive a satisfactory response to a solicitation and all Offers are rejected and, if it is determined by the Branch that soliciting offers again would serve no purpose, negotiations may be conducted with all known sources of supply that may be capable of satisfying the requirement,. The negotiations shall be conducted in writing, and shall include standard language and terms and conditions used by the Branch, unless otherwise provided by this Policy. Negotiations, including the procurement method known as Competitive Negotiation, may also be conducted under conditions that merit a waiver of competition, or in other situations that are advantageous as determined by the GSO.

Section .0500 - Purchase of Used Items

.0501 General Procedures

When it appears that the acquisition of used commodities is in the public interest, the parts of this Policy regarding seeking competition shall be followed wherever feasible.

.0502 Acquisition in the Best Interest of the Branch

Solicitation Documents on used items may or may not include a request for prices on like new products, but in either case acquisition may be made on the basis of that which is considered most advantageous for the intended purpose.

Section .0600 - Removal of Certain Items from General Construction

The Branch shall review the items being included in a construction/renovation project and remove any items that it considers are non-related to the actual construction/renovation of the building. Items that are considered commodities or just furnishings, and that would complete the project for use by the Branch, shall be handled in accordance with this Policy. Items that are usually removed from construction/renovation projects include, but are not limited to, carpet; office panel systems; food service equipment, and furniture. If the Branch determines that one of these items, or any item that is normally handled as a commodity purchase, is best suited

for inclusion in a construction/renovation project, the Branch's justification shall be documented in writing for the public record.

Section .0700 - Inspection and Testing

.0701 Responsibility

For material, equipment, and supplies shipped directly to entities of the Branch, it is the responsibility of the receiving entity, upon delivery, to insure compliance with the contract requirements and specifications. However, when the contract requires shipment to the Judicial Center, a representative of GSD shall conduct an initial packaging inspection. The end user shall conduct an inspection of the goods to determine that they are compliant with the contract specifications.

.0702 Selection

GSD may periodically inspect any items to insure that specifications are met.

.0703 Re-inspections

The Branch may re-inspect any item or service and reverse an entity's decision when justified.

.0704 Samples

When samples are required in response to a Solicitation Document issued by PS, PS shall test, or have tested, those samples. Samples shall not be sent directly to laboratories outside the Branch, unless it is determined by PS that such action is necessary due to lack of capability, time or expertise.

.0705 Specifications

When it is determined to be advantageous, PS may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as a part of contract administration.

.0706 Report of Discrepancy

Where delivered commodities, services or printing fail to meet the specifications or contract requirements, the discrepancy shall be resolved by PS.

Section .0800 - Guarantees and Warranties

.0801 Enforcement

PS shall enforce the contractual guarantee or warranty applying to the supplies, materials, and equipment purchased.

Section .0900 - Term Contracts

.0901 Use

- (1) An Agency Specific Term Contract is a binding agreement between buyer and seller to buy and sell certain commodities, printing or services at certain prices under stipulated terms and conditions. It is neither an "approved list" nor a list of approved or ceiling prices.
- (2) Where available, an Agency Specific Term Contract shall be based upon competition.

.0902 Determining Factors

In determining whether a product should be on a term contract, PS shall consider such factors as volume, nature of the product, repetitiveness of use, relative stability of prices, and transportation costs.

.0903 Special Items

In situations where a general type of item is covered by an Agency Specific Term Contract, but a special type item is needed for a particular application, PS may proceed with the purchase of the special type item in accordance with this policy. The need for the special type item in lieu of the general type item shall be justified in writing and placed in the file for the public record.

.0904 Extension of Agency Specific Term Contract Termination Dates

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

Section .1000 - Multiple Awards

.1001 Use

- (1) Partial, progressive or multiple awards may be made by reasons, including but not limited to, insufficient funds, legislative mandates, where it is advantageous to award separately by items, or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service(s) or geographical areas.
- (2) Notwithstanding the necessity for awards to more than one Offeror in the case of some indefinite quantity contracts, such awards shall be limited to the number of Offerors deemed necessary to reasonably satisfy the intended requirements. Extreme care shall be exercised to protect the character and principles of

competition. Quantities shall not be divided among Vendors on definite quantity requirements unless and except as provided in the Solicitation Document.

Section .1100 - Waiver of Competition

.1101 Policy

Under conditions listed in this Policy, and otherwise if deemed to be in the public interest by the GSO, competition may be waived. Conditions permitting waiver include, but are not limited to:

- (1) Cases where performance or price competition is not available;
- (2) Where a needed product or service is available from only one source of supply;
- (3) Where a pressing need is indicated;
- (4) Where competition has been solicited but no satisfactory offer is received;
- (5) Where standardization or compatibility is the overriding consideration;
- (6) Where a donation predicates the source of supply;
- (7) Where personal or particular professional services are required;
- (8) Where a particular medical product or service, or prosthetic appliance is needed;
- (9) Where a product or service is needed for the blind or severely disabled and there are overriding considerations for its use;
- (10) Where additional products or services are needed to complete an ongoing job or task;
- (11) Where products are bought for "over the counter" resale;
- (12) Where a particular product or service is desired for educational, training, experimental, developmental, or research work;
- (13) Where equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
- (14) Where items are subject to rapid price fluctuation, or immediate acceptance;
- (15) Where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies which thwarts normal competitive procedures;
- (16) Where the amount of the purchase is too small to justify soliciting competition or where a purchase is being made and a satisfactory price is available from a previous contract;
- (17) Where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and,
- (18) Where a used item is available on short notice and subject to prior sale.

.1102 Approval and Documentation

Although competition may be waived pursuant to paragraph Subchapter 1B.1101 of this Policy, competition is required wherever practicable. Where waiver is contemplated, the Branch may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery and terms and conditions.

Section .1200 - Miscellaneous Provisions

.1201 Confidentiality

Trade secrets that the Offeror does not wish disclosed shall be identified as follows: each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Cost information is not confidential. Offeror shall not mark the entire proposal "CONFIDENTIAL". In spite of what the Offeror marks as "CONFIDENTIAL", the determination as to whether the information is confidential or not shall be made in accordance with the North Carolina law.

.1202 Payment Plans

Purchase contracts may provide for payment over a period of time. Such instances, however, shall be fully justified, kept to a minimum and carry written approval of the Director. The Branch shall see that statutory or other prohibitions are not violated. The intended plan of payment shall be included in the Solicitation Document.

.1203 Funds from Different Sources

All funds irrespective of source, whether special, grant funds, federal, local, gifts, bequests, receipts, fees or State appropriated, used for the purchase, rental, lease, installment purchase and/or lease/purchase of commodities, printing and services shall be handled under the provisions of this Policy.

.1204 Conditional Grants in Public Procurement

Where a grant, donation, or special discount is predicated upon making a purchase from the grantor, the proposed transaction shall be explained in writing and shall have the prior approval of the GSO. Prior to the approval the GSO shall consider the conditions placed on the grant, donation, or special discount, and how they will affect the Branch and the State; the cost of agreeing to such conditions, and the market place conditions. When a donation from private sources is predicated upon making the purchase or lease from a specific source, the purchase or lease may be made without prior approval of the GSO.

.1205 Change in Corporate Structure

In cases where Vendors are involved in corporate consolidations, acquisitions or mergers, PS may negotiate agreements for the transfer of contractual obligations and the continuance of contracts within the framework of the new corporate structure but with the understanding that the State's contracts are not instruments for sale and shall not be assigned.

.1206 Procurement From or Through Branch Employees

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

.1207 Use of Procurement Power for Private Gain

- (1) The procurement power of the State or the Branch shall not be used for private gain or advantage. Purchases under contracts made by the State or the Branch, except those in accordance with G.S. §143-58.1 shall not be allowed for personal use out of private funds nor shall the Branch place orders for articles for ownership by employees or other individuals.
- (2) This prohibition shall not apply if:
 - a. The department, institution or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution or agency involved, or the public benefit or convenience; and,
 - b. Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Policy.

.1208 Antitrust Violations

In instances of identical offers or where there are otherwise indications of collusion, awards may be made in a manner intended to discourage or prevent its continuance as deemed to represent the Branch's best interest. Instances of suspected antitrust violation shall be reported to appropriate law enforcement authorities by the Branch.

.1209 Cooperative Procurement

Where the Branch is a participant in an authorized cooperative project with another governmental agency or with a charitable non-profit organization, goods and services necessary to the project shall be acquired according to this Policy; provided, however, that if the interest of the Branch would be better served by one of the following acquisition methods, the GSO may authorize that acquisition method to be used:

- (1) By making acquisition on behalf of such governmental agency or charitable non-profit organization; or
- (2) By authorizing acquisition on the Branch's behalf under the provisions of G.S. 143, Article 8; or
- (3) By authorizing acquisition on the Branch's behalf under the provisions of another State or another governmental entity, provided due consideration is given by the GSO to the differences in Procurement rules, regulations and procedures of the contracting entity.

.1210 Advertising

The Contractor shall neither use the fact that the Contractor has a contract with the Branch or the State in any advertising nor imply that the Branch or the State endorses the Contractor or product.

.1211 Default Proceedings; Debarment

- (1) The Branch may find a Contractor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a Contractor is found in default of contract, the Branch may take action, immediate if

- necessary, to purchase the commodities, printing or services on the open market and charge any additional costs for the commodities, printing or services and the expense for doing so to the defaulting Contractor. If the Branch finds a Contractor in default, such action and the circumstances shall be recorded in writing for the public record. This does not limit any other remedy available to the Branch.
- (2) The Branch may remove the Contractor from any mailing lists which may be utilized and debar the Contractor from doing business with the Branch for a period of time at the discretion of the Branch.

.1212 Faithful Performance

- (1) A bond or other suitable means of insuring faithful performance may be required of the Contractor at the Contractor's expense.
- (2) As a means of ensuring faithful performance from the Contractor liquidated damages in the form of a monetary penalty for late delivery may be provided for in the contract.

.1213 Credit Cards/Procurement Cards

The GSO, in his or her sole discretion, may issue a procurement card for use by Branch personnel. The use of procurement cards, consistent with small purchase policies contained in this Policy or the Procurement Manual is authorized. A credit card transaction which exceeds this policy may be authorized by the GSO.

.1214 Work Performed Outside of the United States

- (1) All work performed pursuant to a contract with the Branch shall occur in the United States.
- (2) An Offeror submitting an Offer shall disclose in a statement, provided contemporaneously with the Offer, where services will be performed under the contract sought, including any subcontracts, and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

Section .1300 - Exemptions, Emergencies and Special Delegations

.1301 Exemptions

- (1) Procurements for the following items and services are exempt from this Policy:
- a. Alcoholic beverages are not purchased by the Branch;
 - b. Perishable articles such as fresh meats;
 - c. Published books, manuscripts, subscriptions to periodicals and other printed materials, packaged copyrighted software products, and like material;
 - d. Services provided by individuals with direct employment contracts with the Branch;
 - e. Public utility services (gas, water, electricity);
 - f. Telephone, telegraph and cable services furnished by those companies;

- g. Services which are subject to published tariff rates as established by the North Carolina Utilities Commission;
 - h. Services which are merely incidental to the purchase of supplies, materials or equipment such as installation services;
 - i. Contracts for the construction of and structural changes to public buildings;
 - j. Personal Services; and,
 - k. Services provided directly by an agency of the State, federal or local government, or their employees when performing the service as a part of their normal governmental function;
- (2) In addition to products and services exempted by this Policy, the GSO may exempt other products or services from this Policy provided that the GSO makes findings:
- a. That competition will not enhance the price that the Branch would receive for the product or service; and,
 - b. That competition will not enhance the quality of the product or service the Branch would receive.

.1302 Emergencies

- (1) The Branch may make purchases of commodities, printing or services in the open market in the case of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including, but not limited to, delay by Contractors; delay in transportation; breakdown in machinery, or unanticipated volume of work; while emergencies are defined as situations which endanger lives, property, or the continuation of a vital program and which can only be rectified by immediate purchases or rental of commodities, printing or services.
- (2) The Branch may negotiate with a potential Contractor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting offers may be issued, if circumstances permit.
- (3) When emergency or pressing need action is necessary, the circumstances shall be recorded in writing for the public record.

.1303 Special Delegations

- (1) The GSO may authorize the Branch to purchase specific commodities, printing or services without limitation as to expenditure, when by their nature or circumstance, such as perishability, transportation costs, local conditions or local availability. Every such delegation shall be in writing, and made a matter of record.
- (2) PS shall periodically review its special delegations to ascertain their continued suitability for delegation.

.1304 General Delegations

The GSO may elect to grant delegations to agencies within the Branch. Such delegations are made at the discretion of the GSO.

Section .1400 - Inventories and Stores

.1401 Supervision

GSD has responsibility for the supervision of storerooms and stores operated by the Branch; for the supervision of inventories of tangible personal property belonging to the Branch, and for reports of stocks on hand.

Section .1500 - Records and Files

.1501 Record Maintenance

Except where state law provides to the contrary, after the award of a contract, the procurement records of the Branch are public documents, and these documents shall be maintained for a period of five years after the expiration date of the contract.

.1502 Files

- (1) Each procurement file shall be identified individually so it can be readily located and identified.
- (2) All purchase transactions shall be documented. As applicable, each file shall include:
 - a. The solicitation document;
 - b. Original offer in writing, or written documentation of verbal offers received;
 - c. Reason for award or cancellation;
 - d. Worksheets/evaluations;
 - e. Mailing list, if used;
 - f. Written justification for waiver or emergency purchase;
 - g. Tabulation of offers received;
 - h. Copy of purchase order(s);
 - i. Related correspondence;
 - j. Negotiated contracts; and,
 - k. Reasons for not accepting technical proposals.
- (3) After award of contract, all material in the file, except confidential information, shall be open to interested persons during normal office hours, may be hand copied, or copies shall be furnished in accordance with the Public Records Act.

Subchapter 1C - Consultant Contracts

Section .0100 - Contracting Procedure for Consultants

.0101 General Statement of Policy

The Branch shall acquire Consultant Services only when the contract is in the best interest of the Branch. In acquiring such services, competition shall be sought whenever practicable as determined by the GSO. The Branch may not contract for services of a consultant nature except in accordance with the provisions of this sub-chapter.

.0102 Consultant Contracts with Other Agencies of Government

Whenever possible, consultant services shall be obtained from other governmental agencies when the services available substantially meet the reasonable specifications of the Branch.

.0103 Request for Authority to Contract with Consultants

Prior authorization to seek consultant services must be obtained from the Director. The written justification shall, at a minimum, explain what services the Branch desires to secure; why the work to be performed by the consultant cannot reasonably be accomplished by employees of the Branch; how the work to be performed relates to the proper functions of the Branch; what benefits the Branch expects to receive from the consultant's services; what the Branch estimates the cost of the services sought will be; and what potential sources of the consultant services, if any, have been identified. If the request is to contract with a consultant from outside of government, the request shall also detail what potential sources of those services exist within government, and explain why the desired services were not available from those sources.

.0104 Review of Requests

The documents submitted requesting authority to retain consultants will be reviewed by the GSO. Upon completion of this review, the Branch will be advised, subject to such conditions as may be prescribed by the GSO to:

- (1) Canvass additional sources within government; or,
- (2) Issue a solicitation document; or,
- (3) Execute a negotiated contract(s) without competitive proposals if the GSO determined that performance or price competition is not available, or that the requirement is for an authorized cooperative project with another governmental unit(s) or a public or private nonprofit organization(s) or that the contract price is too small to justify soliciting competitive proposals; or
- (4) Abandon the project for being outside the scope of the Branch's responsibilities or for having insufficient benefit to the Branch relative to the potential expenditure of funds.

.0105 Competitive Proposals

- (1) When the Branch receives approval to solicit proposals for consultant services it shall, through PS:
 - a. Prepare a request for proposals in accordance with this Policy and disseminate among prospective service providers;
 - b. Publicly open all proposals received at a date and time set in the request for proposals; however, in a Two-Step Procurement Process evaluation process, only the technical proposal shall be opened on the opening date. The cost proposal is opened only if the technical proposal is determined by the Branch to be acceptable;
 - c. Review all proposals received on the basis of evaluation criteria significantly related to the function to be performed and equally applied to all proposals received.

- (2) The final recommendation shall be submitted by the GSO to the Director who shall make the final decision.

.0106 Negotiated Consultant Contracts

When the Branch is authorized to enter into a negotiated contract(s) for consultant services without soliciting competitive proposals, the proposed contract must be reviewed by the GSO prior to execution.

.0107 Consultant Contract Modification

Any modification to an approved contract shall be subject to the same approval requirements as the original contract(s). The Director may at his option, during the process of reviewing requests for contract modifications, waive any of the requirements of part .0103 of this section.

.0108 Format

All contracts for consultant services shall be in writing, and in a format approved by the Branch. Contracts must be executed by the Director or his designee.

Subchapter 1D - Service Contracts

Section .0100 - Services

.0101 Applicability

This Subchapter does not apply to Personal Service Contracts; to contracts entered into with the School of Government, or to contracts entered into by an entity of the Branch pursuant to specific statutory authority, which in the opinion of the GSO, provides a specific alternative procedure for the selection and award of such contracts.

Section .0200 - Contracting Procedure

.0201 General Statement of Policy

Service Contracts are an efficient and economical means of obtaining various services for the Branch on an occasional or temporary basis. The procurement methodology applied to the acquisition of the Service shall be based on the type of service anticipated; its general availability in the marketplace; and, its anticipated cost.

.0202 Services Costing Less than \$10,000.

Service requirements costing less than \$10,000.00 are not subject to a competitive procurement process.

.0203 Procurement Procedures

Agencies within the Branch wishing to obtain Services costing less than \$10,000.00 shall submit to PS a task description of the Services required, and the results which are desired. Task descriptions shall contain all of the following:

- (1) Proposed date(s) of Service. The contract shall not be for more than three (3) years including extensions or renewal options without the prior written approval of the GSO.
- (2) Detailed specifications or type and level of work required.
- (3) Proposed Contractor name, address, telephone number, and email address of Contractor key personnel.
- (4) What the Branch shall furnish.
- (5) What the Contractor shall furnish.
- (6) Other subject matter(s) bearing on the conduct of the work.
- (7) Funding Source.
- (8) Assigned contract administrator.
- (9) Proposed contract cost.
- (10) Whether or not the Contractor will be reimbursed for travel.
- (11) Location of Service.
- (12) Any other information requested by PS.

.0204 Services Costing \$10,000. Or More

Services in this category shall be handled in accordance with 01B.0301(2)(b) of this Policy.

.0205 Procurement Procedures

Agencies within the Branch wishing to obtain Services costing \$10,000.00 or more shall submit to PS a task description of the Services required, and the results which are desired. Task descriptions shall contain all of the following:

- (1) Proposed date(s) of Service. The contract shall not be for more than three (3) years including extensions or renewal options without the prior written approval of the GSO.
- (2) Detailed specifications or type and level of work required.
- (3) What the Branch shall furnish.
- (4) What the Contractor shall furnish.
- (5) Other subject matter(s) bearing on the conduct of the work.
- (6) Funding Source.
- (7) Assigned contract administrator.
- (8) Any other information requested by PS.

Subchapter 1E

Section .0100 – No Cost Contracts

.0101 General

Because all contracts, whether there is an expenditure of state funds or not, contain risk for the Branch and need to be evaluated for non-monetary obligations the contract places on the Branch, except for those persons specifically set out in this Policy, no Branch

employee has the authority to enter into a contract on behalf of the Branch. These types of contracts include, but are not limited to, a click-through agreement for trial versions of software, or a written contract for a no-cost subscription to a service. If you need to enter into such an Agreement, contact PS for assistance and contract review.

Subchapter 1F

Section .0100 - Protest Procedures

.0101 General

The Branch recognizes the right of Offerors who feel that an incorrect decision was made with regard to the award of a contract to have their grievance heard. This subsection is intended to create a simple and informal method for the consideration of complaints.

.0102 Procedure

If an Offeror disagrees with the award decision for any contract that has a value of \$10,000 or more awarded by the Branch, Offeror shall proceed as follows:

- (1) Not later than 15 calendar days after award of the contract Offeror shall send a letter to the GSO stating in detail the act or omission or other circumstance which allegedly harmed the Offeror and request the opportunity for a protest meeting.
- (2) Not later than 15 days after receipt of the letter the GSO, shall respond in writing to the Offeror by either refusing the protest meeting request or scheduling an opportunity for the Offeror to be heard in a protest meeting.. The protest meeting shall be held not less than 30 days after the GSO's receipt of the Offeror's letter.
- (3) The Offeror may be accompanied by counsel. If the Offeror brings their counsel the Branch will also be represented by counsel. There shall be no record made of the protest meeting. The protest meeting is intended to be an informal discussion as opposed to a formal judicial proceeding.
- (4) The GSO will have 30 calendar days after the close of the informal discussion to render a written summary of his findings, and a decision regarding the Offeror's claims.
- (5) The GSO is authorized to take what action he or she deems appropriate to resolve the concern, including but not limited to denying the claim; overturning the award in favor of a different award; or voiding the initial award and ordering a re-bid.
- (6) Not later than 15 calendar days after receipt of the GSO's decision Offeror shall send a letter to the Director stating in detail the reasons Offeror disagrees with the GSO's decision.
- (7) Not later than 15 days after receipt of the letter from the Offeror, the Director shall respond in writing to the Offeror by either refusing the protest meeting request or scheduling an opportunity for the Offeror to be heard in a protest meeting. The protest meeting shall be held not less than 30 days after the Director's receipt of the Offeror's letter.

- (8) The Director will have 30 calendar days after the close of the informal discussion to render a written summary of his findings, and a decision regarding the Offeror's claims.
- (9) The Director is authorized to take what action he or she deems appropriate to resolve the concern, including but not limited to denying the claim; overturning the award in favor of a different award; or voiding the initial award and ordering a re-bid.

.0103 Appeals

If the Director denies the request, challenges to awards may only be made by filing a civil complaint in the Superior Court, Wake County, Raleigh, North Carolina. Statements and notes from the informal review proceeding are inadmissible in any subsequent legal proceeding.

Subchapter 1G

Section .0100 - Surplus Property

.0101 General

The Branch recognizes the requirement for accounting for the personal property acquired by the Branch for the use of its employees. To that end, the following Policy is put in place.

.0102 Applicability

The Policy is applicable to all of the property owned or leased by the Branch.

Section .0201 Disposition of Surplus Property

.0201 Disposition by Means Other Than Sale

Surplus Property may, in certain circumstances, be transferred by the Branch to authorized recipients. Authorized recipients include other State Agencies, and political subdivisions of the State, including, but not limited to, cities and counties.

.0202 Approval for Disposition Other Than Sale

A request form to dispose of property by disposition other than sale shall be forwarded to the GSO.

The GSO will either approve or disapprove the Request. For approved requests, the GSO will forward a copy of the approval to the requestor, and to the Fixed Asset Inventory Officer in the Financial Services Division, and maintain a copy in the GSD. For disapproved requests, the GSO will forward a copy to the requestor and maintain a copy in the GSD.

.0203 Disposition by Sale

For disposition of Branch property by sale, the Branch will use the services of the DOA's Division of Surplus Property. The GSO may, in his or her discretion, waive this requirement.