

Appendix A

Policies and Procedures for the Procurement of Commodities and Services

NORTH CAROLINA TURNPIKE AUTHORITY POLICIES AND PROCEDURES FOR THE PROCUREMENT OF COMMODITIES AND SERVICES

RESPONSIBILITY

The North Carolina Turnpike Authority (hereinafter referred to as the “NCTA” or “Authority”) is responsible for administering the agency program for procuring commodities, goods, information technology and services. These policies and procedures shall apply to the acquisition of all equipment, materials, supplies, printing, and services, through outright purchase, rental, lease, lease-purchase, or installment purchase

The Executive Director is hereby authorized to develop administrative controls and operation manuals to implement the authority and responsibilities for implementing the policies and procedures promulgated herein.

POLICY STATEMENT AND SCOPE

It is the Authority’s policy to administer its procurement program in a manner that ensures and encourages free and open competition and based upon sound procurement procedures and management. Unless an exception is approved by NCTA Board of Directors to meet special needs or emergency circumstances, NCTA procurements shall comply with the policies and procedures as prescribed herein.

It is the Authority’s policy to encourage and promote the use of historically underutilized businesses, including but not limited to small contractors, minority contractors, physically handicapped contractors and women contractors in the procurement of general commodities and services, information technology and consultant services. In promoting the use of historically underutilized businesses, the Authority will be guided by statutory provisions set forth in Article 3 of Chapter 143 of the North Carolina General Statutes and guidance set forth by the Department of Transportation and DOA. When federal aid funds are utilized on turnpike projects, the Authority will adhere to the Disadvantaged Business Enterprise (“DBE”) requirements as those may be applicable to the Authority’s procurement program.

PROCUREMENT PROCEDURES

I. PROCUREMENT PROCEDURES FOR GENERAL COMMODITIES AND SERVICES

a) Small Purchases:

A small purchase is defined as the purchase of commodities (equipment, materials and supplies), services or printing, not covered by a State or Authority term contract, involving an expenditure of funds of five thousand dollars (\$5,000) or less. The Executive Director, or his designee, shall set forth, in writing, purchasing procedures for making small purchases. The Executive Director shall keep an account of all such expenditures and make such reports to the Board as may be requested.

b) Purchases Between Five Thousand Dollars and Ten Thousand Dollars:

For purchases involving an expenditure of funds over five thousand dollars (\$5,000) but less than ten thousand dollars (\$10,000), such expenditures shall be approved in the Annual Plan of Work, in the Authority budget or by the Board. The NCTA shall solicit three written quotes. If the NCTA is unable to obtain three written quotes, written justification will be provided to the Executive Director or his or her designee for approval prior to purchase. The Executive Director shall keep an account of all such expenditures and make such reports to the Board of as may be requested.

c) Purchases Over Ten Thousand Dollars:

For purchases involving an expenditure of funds over ten thousand dollars (\$10,000), such expenditures shall be authorized in the Annual Plan of Work, in the Authority budget or by the Board. The NCTA shall adhere to the following procedures:

- i) Competition shall be solicited;
- ii) Solicitation documents requesting or inviting offers shall be issued; and
- iii) Mailing lists may be used also for the purpose of soliciting competition.

Competitive Bidding Procedure for Purchases Over Ten Thousand Dollars:

- (1) Where the total requirements for commodities, services or printing jobs involve an expenditure of funds in excess of \$10,000, a competitive bidding procedure shall be utilized as follows:
 - (a) Sealed offers for commodities and printing shall be solicited via advertisement, and
 - (b) After opening and evaluating the offers received, the Authority shall award contracts.
- (2) For service contracts, the NCTA shall prepare a task description of the services requested and the desired results. Task descriptions shall contain all of the following:

- (a) The date(s) of service (The contract shall not be for more than three years including extensions and renewals, without the prior approval of the Authority Board);
 - (b) Detailed specifications or type and level of work required;
 - (c) What the NCTA shall furnish;
 - (d) What the Contractor shall furnish;
 - (e) The method, schedule, and procedures for billing and payments; and
 - (f) Other subject matters bearing on the conduct of the work.
- (3) Evaluation:
- (a) In determining the award of contracts, bona fide offers shall be considered and evaluated as provided by this Policy. The evaluation criteria to be used in determining the award of contract shall be identified in the procurement document.
 - (b) An unexecuted offer or an offer without a delivery time shall be rejected.
 - (c) During the period of evaluation and prior to 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 in the NCTA who are responsible for handling the offers and accompanying information, and to others determined necessary by the NCTA, for the purpose of evaluation and award of contract. Offeror participation in the evaluation process shall not be permitted. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by persons in the NCTA who are responsible for handling the offers and accompanying information. After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets.

II. PROCUREMENT PROCEDURES FOR INFORMATION TECHNOLOGY AND IT SERVICES

Information technology (IT) purchases shall be in accordance generally with "Best Value" information technology procurements (G.S. 143-135.9) as follows:

"Best Value procurement means the selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance where quality is considered an integral performance factor. The award decision will be based on multiple factors, including: total costs of ownership; cost of acquiring, operating, maintaining and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the

solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.”

Unless an exception is approved by NCTA Board of Directors for special needs or emergency circumstances, information technology procurements by the NCTA shall comply with the following delegations and procedures:

- a) Purchases of Less than \$5,000.00:
A small purchase is defined as the purchase of IT goods and services, where the expenditure of funds is five thousand dollars (\$5,000) or less. The Executive Director, or his designee, shall set forth in writing purchasing procedures for making small purchases consistent with the documentation required pursuant to the Authority’s administrative policies. The Executive Director shall keep an account of all such expenditures and make such reports to the Board as may be requested.
- b) Purchases of More than \$5,000.00:
For purchases involving an expenditure of funds over five thousand dollars (\$5,000), such expenditures shall be approved in the Annual Plan of Work, in the Authority budget or by the Board. The Executive Director shall keep an account of all such expenditures and make such reports to the Board as may be requested. The Executive Director will utilize the following methodologies to encourage competition:
 - i) The Executive Director or his or her designee will issue a solicitation document requesting or inviting offers;
 - ii) The solicitation document will include terms and conditions for the procurement of the goods and services; and
 - iii) The NCTA may request a distribution list, if available from State Information Technology Services (ITS), and use the ITS list in addition to any distribution list developed and maintained by the NCTA for the purpose of soliciting competition.
- c) Types of solicitations:
The following types of solicitation methods may be used:
 - (1) One-step Request for Proposals (RFP) – The Technical and Price Proposal is submitted in a single document.
 - (1) If the lowest priced technically acceptable method of source selection is used, only clarifications are allowed.
 - (2) If the trade off or ranking method of source selection is used, communications may be established to clarify competitive ranges or to negotiate final price.
 - (2) Two-step RFP – The Technical Proposal (step one) and the Price Proposal (step two) are submitted in separate documents.
 - (1) If the lowest priced technically acceptable method is used, technical responses (step one) are evaluated for acceptability

only. Only clarifications with offerors are allowed. Price offers are opened (step two) for only those offerors who submitted technically acceptable responses. Selection is made by low price analysis.

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

d) Authorized Procurement Methods for Competitive Source Selection for IT and IT Services:

i) “Best Value” Source Selection method:

- (1) The appropriate best value bidding method will be determined by the Executive Director, or his or her designee.
- (2) A conference or site visit may be scheduled, as deemed necessary and specified in the solicitation document.
- (3) A public bid opening will be conducted following receipt of offers. For solicitations that allow for negotiation after receipt of offers, only the names of responding bidders will be revealed. Price information will be made public after evaluation and award.
- (4) The NCTA will establish a technical evaluation committee to evaluate the offers in accordance with the evaluation factors specified 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. Relative strengths, deficiencies, weaknesses, and risks supporting the evaluation will be documented in the contract file. Evaluation factors may include but are not limited
 - (a) to quality factors;
 - (b) delivery and implementation schedule;
 - (c) maximum facilitation of data exchange and systems integration;
 - (d) warranties, guarantees, and return policies;
 - (e) vendor financial stability;
 - (f) consistency of the proposed solution with the states strategic program direction;
 - (g) effectiveness of business solution and approach;
 - (h) industry and program experience; prior record of vendor performance;
 - (i) vendor expertise with similar projects;

- (j) proven development methodologies and tools; and
 - (k) innovative use of technologies.
 - (5) Clarifications, communications to establish a competitive range, 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 of 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.
 - (6) The technical evaluation committee will determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation document. The offerors will be ranked from most advantageous to least advantageous to the NCTA.
 - (7) Award will be made to the responsive and responsible offeror whose offer is determined in writing to be the most advantageous to the NCTA, using the evaluation factors set forth in the solicitation. If the lowest price technically acceptable method is used, award will be made to the responding and responsible offeror with the lowest price.
- ii) A “Trade-off method” of source selection may be utilized when it is in the best interest of the NCTA to consider award to other than the lowest priced offer or other than the highest technically qualified offer. For a solicitation using a trade off source selection method, the following will apply:
- (1) All evaluation factors that will affect the contract award decision and their relative importance will be clearly stated in the solicitation.
 - (2) Price will be considered as an evaluation factor in the selection process. The solicitation will state the importance or numerical weight of all evaluation factors including price.
 - (3) Offers will be ranked using the evaluation factors and their relative importance or weight 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 evaluation factors received low rankings, the overall ranking of the offer would be reduced.
 - (4) Clarifications are permitted. If specified in the solicitation, communications and negotiations may be permitted after receipt of offer.
- iii) The “Lowest Price Technically Acceptable” source selection method may be used when best value is expected to result from selection of the

technically acceptable offer with the lowest evaluated price. When using the lowest price technically acceptable method, the following will apply:

- (1) The evaluation factors that establish the requirements of acceptability will be set forth in the solicitation. Solicitations will specify that award will be made on the basis of the lowest evaluated price of those proposals that meet or exceed the acceptability requirements for non-price factors.
 - (2) Trade offs between price and non-price factors will not be permitted.
 - (3) Proposals will be evaluated for acceptability but will not be ranked using the non-price factors.
 - (4) Only clarifications will be permitted.
- iv) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the NCTA and are approved for use by the Executive Director or his or her designee.

III. PROCUREMENT PROCEDURES FOR CONSULTANT SERVICES

Consultant services shall mean work or task(s) 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, analysis or advice in formulating or implementing improvements in programs or services.

- a) Contracting Procedures for Consultants:
The NCTA shall acquire consultant services only when the contract is in the best interests of the Authority and the State. In acquiring such services, competition shall be sought whenever practicable.
- b) Consultant Contract with other Agencies:
Consultant services shall be obtained from other agencies when such services substantially would meet the reasonable specifications of the project.
- c) Request for Authority to Contract with Consultants:
Before receiving authorization to seek consultant services, an agency shall submit to the written justification for its request for consultant services to the Office of the Governor of North Carolina in compliance with Article 3C of GS 143. This written justification shall at a minimum explain what services the agency desires to secure, why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency, how the work to be performed relates to the proper functions of the agency, what benefits the agency expects to receive from the consultant's services, what the agency estimates to be the cost of the services sought, and what potential sources of consultant services if any

the agency has identified. If the NCTA is requesting authority to contract for consulting services outside of State government, it shall also detail what potential sources of those services exist within State government and explain why the desired services were not available from those sources. The written justification shall be accompanied by a letter of endorsement for the proposed contract(s) from the Executive Director or his designee.

The NCTA may be required by the Governor or designee, to:

- i) canvass additional sources within state government;
- ii) solicit proposals from private contractors;
- iii) execute a negotiated contract(s) without competitive proposals if the Governor determines 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
- iv) abandon the project for being outside the scope of the agency's responsibilities or for having insufficient benefit to the NCTA or State relative to the potential expenditure of funds.

d) Competitive Proposals:

If the NCTA receives approval from the Office of the Governor to solicit proposals for consultant services, the NCTA shall:

- i) Prepare a request for proposals in accordance with these policies and disseminate among prospective service providers;
- ii) Circulate the request for proposals to such sources of consultant services;
- iii) Publicly open all proposals received at a date and time set in the request for proposals; however, in a two-step 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 State to be acceptable;
- iv) 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;
- v) Prepare a file memorandum citing criteria for selection and contract award.

e) Negotiated Consultant Contracts:

If the NCTA enters into a negotiated contract(s) for consultant services without soliciting competitive proposals, the NCTA shall submit the proposed contract(s) to the Office of the Governor for review and approval prior to execution. Upon completion of this review the requesting agency shall be notified in writing by the Governor or his designee that an approved contract(s) may be executed.

- f) **Consultant Contract Modification:**
Any modification to an approved contract(s) shall be subject to the same approval requirements as the original contract(s). The Governor or his designee may at his option, during the process of reviewing requests for contract modifications, waive any of the provisions of this Policy.
- g) **Format:**
All contracts for consultant services shall be in writing and shall be executed by the Executive Director.
- h) **Relationship of Consultant to State:**
No contract for consultant services shall create an employer-employee relationship between the State of North Carolina and the consultant.

ELECTRONIC, TELEGRAPH, FACSIMILE, AND TELEPHONE OFFERS

Electronic, telegraph, facsimile, and telephone offers shall not be accepted in response to solicitations that are required to be sealed.

RECALL OF OFFERS

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

PUBLIC OPENING

Advertised procurements shall be publicly opened at the time, date, and place identified in the procurement document. At the time of opening, the names of the companies, 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 this Policy.

Under a two step process, the cost/price offer(s) shall not become public record until the technical offer(s) are evaluated (first step) and then only those offerors determined to have acceptable technical offers shall have their cost/price offers opened (second step). The cost/price offers from offerors whose technical offers were deemed unacceptable shall remain unopened. The remaining cost/price offers shall be publicly opened, and the offeror(s) with the acceptable technical offer(s) notified of the time and place for the opening. At least two agency working days notice shall be given prior to the opening. In addition, there shall be at least two agency employees present at the opening.

LATE OFFERS, MODIFICATIONS, OR 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 NCTA personnel directly serving the procurement process. The offeror shall have his offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or

any other delivery services available.

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 may be considered and acted upon. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the procurement document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices.

EXTENSION OF ACCEPTANCE TIME

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

NOTIFICATION OF AWARD

The Authority shall post a notice of the resulting contract award via the NCTA website or through the State Division of Purchasing and Contract when utilizing said services.

LACK OF COMPETITION

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

TABULATIONS AND ABSTRACTS

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

SOLICITATION DOCUMENTS

A solicitation document is defined as a written Request for Quotes, Request for Proposals (RFP) or an Invitation for Bids (IFB). The NCTA shall use the IFB or RFP document, whichever is applicable, when soliciting competition on contracts valued over ten thousand dollars (\$10,000). The IFB and RFP solicitation documents shall require bidders or offerors to certify that each bid or offer is submitted competitively and without collusion.

DIVISION OF REQUIREMENTS

The NCTA shall not divide requirements in order to keep the expenditure under its \$5,000 small purchase limit and thereby avoid following the appropriate contracting requirement. In the case of similar and related items and groups of items, the dollar limits apply to the total cost rather than the cost of any single item.

ADVERTISEMENT REQUIREMENTS

Solicitation documents shall be advertised at least once and at least 10 days prior to the date designated for opening. This Policy does not prevent solicitation of offers by additional direct mailings or additional advertisement.

The solicitation documents shall include such relevant information as specifications and requirements; terms and conditions; a short description of the commodity, service or printing requirement; and the opening date, time and place. If the solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, this information shall also be furnished with the advertisement, to include date, time, location, contact person and the contact person's phone number.

Within three agency working days from the award of a contract, the NCTA shall post an award notice directly to the NCTA website on the internet. The award notice shall be posted for at least 30 consecutive calendar days. This award notice shall identify the contract and award information.

MANDATORY CONFERENCES/SITE VISITS

- (1) When a solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, the date, time, location, and other pertinent 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 or mandatory site visit, the conference or site visit may continue to be conducted, but the solicitation shall be canceled immediately following the conference or site visit. If this occurs, the NCTA shall investigate why only one potential offeror was in attendance and ascertain if there is any competition available. If it is determined that competition is available, the NCTA shall again attempt to obtain competition by following this Policy. 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 persons in the NCTA who are responsible for handling the offers and accompanying information. Any and all revisions to the solicitation document shall be made only by written addendum. Verbal communications from whatever source are of no effect.

REJECTION OF OFFERS

In soliciting offers, any and all offers received may be rejected in whole or in part. Basis for rejection shall 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 procurement 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 specifications or indication that revision(s) would be to the state'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 determination of the lowest responsible or most advantageous offer; any determination that rejection would be to the best interest of the NCTA or the State. Action in rejecting offers in whole or in part shall be made a matter of record.

NEGOTIATION

If the NCTA does not receive a satisfactory offer in response to a solicitation and all offers are rejected, negotiations may be conducted with all known sources of supply that may be capable of satisfying the requirement; if it is determined that soliciting offers again would serve no purpose. Negotiations shall be conducted in writing. If the negotiations are conducted with only one source or if only one source responds to the negotiations, the reason for lack of competition shall be documented in writing for public record. Negotiations may also be conducted under conditions that merit a waiver of competition, or in other situations that are advantageous as determined by the Authority Board.

PURCHASE OF USED ITEMS

The Policy stated herein regarding seeking competition shall be followed wherever feasible, when it appears that the acquisition of used commodities is in the public interest.

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.

REMOVAL OF CERTAIN ITEMS FROM GENERAL CONSTRUCTION

The NCTA 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 Authority, shall be handled in accordance with this Policy. Items that are usually removed for construction/renovation projects include carpet, office panel systems, food service equipment, and furniture. If the NCTA determines that one of these items, or any item that is normally handled as a commodity purchase, is best suited for inclusion in the construction/renovation project, the Authority's justification shall be documented in writing for public record.

INSPECTION AND TESTING

In general, it is the responsibility of the NCTA to inspect all materials, supplies, and equipment upon delivery to insure compliance with the contract requirements and specifications. The NCTA is responsible to insure that items and services purchased comply with applicable codes, statutes, local ordinances, policies or safety requirements.

SAMPLES

When samples are required in response to a solicitation document issued, the NCTA shall test, or have tested, those samples.

SPECIFICATIONS

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

REPORT OF DISCREPANCY

Where the goods, supplies, materials equipment, services or printing delivered fails to meet the specifications or contract requirements, the discrepancy shall be resolved by the Executive Director or his or her designee.

ENFORCEMENT OF GUARANTEES AND WARRANTIES

The NCTA shall enforce the contractual guarantee or warranty applying to the goods, supplies, materials, and equipment purchased. If the NCTA has difficulty in obtaining satisfactory performance including service as provided for in a guarantee or warranty, the vendor will be notified promptly. The NCTA shall notify the vendor promptly when latent or other defects are discovered.

TERM CONTRACTS

- (1) Term contracts, known also 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.
- (2) A term contract is a binding agreement between purchaser and seller to buy and sell certain commodities, printing, or services at certain prices and under stipulated terms and conditions. It is neither an "approved list" nor a list of approved or ceiling prices.
- (3) A term contract shall be based upon competition.
- (4) The NCTA may issue solicitation documents for an agency specific term contracts for use by the Authority if the commodity, printing, or service **is not covered by a statewide term contract**.

DETERMINING FACTORS FOR ISSUING TERM CONTRACTS

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

SPECIAL ITEMS

In situations where a general type of item is covered by a statewide term contract but a special type item is needed for a particular application, the NCTA may proceed with the purchase of the special type item under this Policy. The need for the special type item in lieu of the general type item shall be justified by the NCTA in writing and documented in the agency file for public record.

EXTENSION OF CONTRACT TERMINATION DATES

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

PARTIAL AND MULTIPLE AWARDS

Partial, progressive or multiple awards may be made by reason of 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.

Notwithstanding the necessity for awards to more than one supplier in the case of some indefinite quantity contracts, such awards shall be limited to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Extreme care shall be exercised to protect the character and principles of competition. Quantities shall not be divided among companies on definite quantity requirements unless and except as provided in the procurement document.

WAIVER OF COMPETITION

Under conditions listed in this Policy, and otherwise if deemed to be in the public interest by the Authority Board, upon recommendation of the Executive Director, competition may be waived. Conditions permitting waiver include cases where:

- performance or price competition is not available;
- a needed product or service is available from only one source of supply;
- emergency action is indicated;
- competition has been solicited but no satisfactory offers received;
- standardization or compatibility is the overriding consideration;
- a donation predicates the source of supply;
- personal or particular professional services are required;
- a product or service is needed for the blind or severely disabled and there are overriding considerations for its use;
- additional products or services are needed to complete an ongoing job or task;
- products are bought for "over the counter" resale;
- a particular product or service is desired for educational, training, experimental, developmental or research work;
- equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
- items are subject to rapid price fluctuation or immediate acceptance;
- 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;
- 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;

- the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and
- a used item(s) is available on short notice and subject to prior sale.

Although competition may be waived, competition is required wherever practicable. Where waiver is contemplated, the NCTA 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, terms and conditions. Under an emergency or pressing need situation, a solicitation document requesting or inviting an offer(s) shall be issued, unless circumstances prohibit their use.

CONFIDENTIALITY

All information and documentation relative to the development of a contractual document (Request for Quotes, Request for Proposals, Waiver of Competition, Negotiation, etc.) for a proposed procurement or contract shall be deemed confidential in nature, except as deemed necessary by the purchaser to develop a complete contractual document. Such material shall remain confidential until the award of contract.

This includes all information and documentation relative to the development of a specification until the adoption of that specification or an award of contract if developed for a specific procurement or contract, whichever is later.

During the period of evaluating offers and prior to 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 in the NCTA who are responsible for handling the offers and accompanying information, and to others determined necessary by the Executive Director, for the purpose of evaluation and award of contract. Offeror participation in the evaluation process shall not be permitted. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by the Executive Director or his or her designee. After award of the contract, or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets, subject to the following:

To promote maximum competition and to protect the public competitive procedure from being used to obtain information which would normally not be available otherwise, the NCTA may maintain the confidentiality of certain types of information. Such information includes trade secrets, as determined by North Carolina law, and like information as the Executive Director or his or her designee may determine to insure the integrity of the public purchasing process. Trade secrets which the offeror does not wish disclosed shall be identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Cost information shall not be deemed confidential.

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 prior approval of the Executive Director. The intended plan of payment shall be included in the procurement document.

FUNDS FROM DIFFERENT SOURCES

All public funds irrespective of source, whether special, federal, local, gifts, bequests, receipts, fees, or State appropriated, used for the purchase, rental, lease, installment purchase and lease/purchase of commodities, printing and services shall be handled in accordance with applicable General Statute.

CONDITIONAL GRANTS ETC IN PUBLIC PURCHASING

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 prior approval of the Executive Director. Prior to approval, the Executive Director shall consider the conditions placed on the grant, donation, or special discount, and how they will affect the Authority 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 Executive Director.

CHANGE IN CORPORATE STRUCTURE

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

PURCHASES FOR ACROSS THE COUNTER RESALE

Purchases of items for "across the counter" resale shall be in accordance with policies adopted by the Authority Board.

PURCHASING FROM OR THROUGH AGENCY EMPLOYEES

Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior written approval from the Executive Director is required in any instance which may develop of doing business with such personnel. In deciding whether to grant approval, the Executive Director 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.

USE OF PURCHASING POWER FOR PRIVATE GAIN

The purchasing power of the state or the NCTA shall not be used for private advantage or gain. Purchases under contracts made by the State or the NCTA shall not be allowed for personal use out of private funds nor shall NCTA place

orders for articles for ownership by employees or other individuals.

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 NCTA's best interest. Instances of suspected antitrust violation shall be reported to appropriate law enforcement authorities.

COOPERATIVE PURCHASING

The NCTA is authorized to utilize cooperative purchasing with another governmental agency or charitable non-profit organization. Where the NCTA 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 the interest of the NCTA and the State would not be better served by one of the following acquisition methods:

- (1) by making acquisition on behalf of such governmental activity or charitable non-profit organization; or
- (2) by authorizing acquisition on the State's behalf under the provisions of another State or another governmental entity, provided due consideration is given to the differences in purchasing rules, regulations and procedures of the contracting entity.

PROTEST PROCEDURES

To insure fairness to all offerors and to promote open competition, the NCTA shall actively follow-up and be consistent in responding to an offeror's protest over contract awards.

When an offeror desires to protest a contract awarded by the NCTA, the NCTA and the offeror shall comply with the following:

- (1) The offeror shall submit a written request for a protest meeting to the Executive Director which shall be received within 30 consecutive calendar days from the date of the contract award. The offeror's letter shall contain specific reasons and any supporting documentation for why it has a concern with the award. If the letter does not contain this information or if the Executive Director determines that a meeting would serve no purpose, the Executive Director may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request.
- (2) If the protest meeting is granted, the Executive Director shall attempt to schedule the meeting within 30 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 consecutive calendar days from the date of the protest meeting, the Executive Director shall respond to the offeror in writing with the Executive Director's decision.
- (3) The Executive Director may appoint a designee to act on the Executive Director's behalf under this Policy.

DEFAULT PROCEEDINGS; DEBARMENT

The NCTA may find a contractor in default of a contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor is found in default of contract, the NCTA may take action, immediately if necessary, to purchase the needed commodities, printing or services on the open market and charge any additional cost for the commodities, printing or services and expense for doing so to the defaulting contractor.

FAITHFUL PERFORMANCE

A bond, or other suitable means of insuring faithful performance, may be required of the contractor at the contractor's expense. Liquidated damages, in the form of a monetary penalty for late delivery, may be provided for in the contract, as a means of ensuring faithful performance from the contractor.

RECIPROCAL PREFERENCE

Each solicitation document used to obtain contracts for equipment, materials, supplies, and services that exceed twenty-five thousand dollars (\$25,000) in value shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the solicitation document. This shall not prevent the NCTA from investigating this information and concluding that the principal place of business is different.

PROCUREMENT CARDS

The NCTA may utilize procurement cards (organizational charge cards). Procurement cards are for official use only and shall be used in accordance with the policies and procedures of the Office of State Treasurer and other applicable, established state policies and procedures. As the State's electronic procurement system is implemented, it shall be used to the fullest extent possible, including issuance of purchase orders. Procurement cards may be used as a payment mechanism within e-procurement if permitted by fiscal policies of the NCTA.

PRESSING NEEDS AND EMERGENCIES

The NCTA may make purchases of commodities or services in the open market in cases of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work. An emergency is defined as a situation which endangers lives, property or the continuation of a vital program and which can be rectified only by immediate, on-the-spot purchases or rental of commodities or services.

The NCTA 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, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, unless circumstances prohibit their use.

A pressing need or emergency purchase in excess of \$10,000 shall be approved by the Executive Director, the Chief Financial Officer and the Chair of the Board. Pressing need or emergency purchase in excess of \$25,000 shall be reported to the Authority Board.

INVENTORIES AND STORES

The North Carolina Department of Administration, Division of Purchase & Contract has responsibility for general supervision of storerooms and stores operated by state government, for supervision of inventories of tangible personal property belonging to state government and for reports by them of stocks on hand.

In the event the NCTA is required to maintain centralized warehouse facilities, the Authority Board shall have inventory control procedures in place which insure at a minimum, written inventory count of contents, written records of receipts and issues, economical ordering and efficient level of inventories, safe storage of hazardous materials, and security.

RECORD MAINTENANCE

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

Each contract file shall be identified individually so it can be readily located and referenced. All purchase transactions shall be documented. As applicable, each file shall include:

- (1) Original offers if in writing, or written documentation of verbal offers received;
- (2) Reasons for award or cancellation;
- (3) Worksheets/evaluations;
- (4) Mailing list, if used;
- (5) Written justification for waiver or emergency purchase;
- (6) Tabulation of offers received;
- (7) Copy of purchase order(s);
- (8) Related correspondence;
- (9) Reason(s) for receiving only one offer in response to a solicitation;
- (10) Negotiated contracts; and
- (11) Reasons for not accepting technical proposals.

After award of contract all material in the file, except confidential information, shall be open to interested persons during normal office hours, and may be hand copied or copies shall be furnished in accordance with the Public Records Act.

HISTORICALLY UNDERUTILIZED BUSINESS, MINORITY BUSINESS, SMALL BUSINESS AND DISADVANTAGED BUSINESS

As applicable to expenditures made pursuant to these policies and procedures, the NCTA will comply fully with the North Carolina Department of Transportation's ("NCDOT") Disadvantaged Business Enterprise ("DBE") Program, unless the NCTA establishes a separate program as approved by the United States Department of Transportation. The NCTA will comply with the DBE goals and good faith effort requirements established in conjunction with NCDOT. The NCTA will keep account of its utilization of historically underutilized businesses, small businesses and disadvantaged businesses and incorporate such utilization in reports to NCDOT or such other State or federal agencies as required.

RECYCLED PAPER

The NCTA will comply with the State's goals to purchase recycled content paper and paper products as established in G.S. 143-58.3.

ADOPTION

The Policies and Procedures for the Procurement of Commodities and Services is adopted on this 17th day of September 2008.