



North Carolina Department of Administration

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To: Joint Legislative Committee on Governmental Operations
Program Evaluation Division

Date: July 16, 2014

Subject: Report on the Feasibility of Adopting the American Bar Association Model
Procurement Code

Pursuant to General Statute 143-49 (16), the Division of Purchase and Contract in the Department of Administration is hereby submitting recommendations regarding the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The attached report includes a summary report and a comparison of the ABA Model Procurement Code and North Carolina Procurement Requirements.

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Introduction

This Report is submitted in compliance with S.L. 2013-234 (HB 56), which directs the Department of Administration to conduct a review of State Procurement laws and to report recommendations for improvements to the Joint Legislative Committee on Government Operations and to the Program Evaluation Division by June 30, 2014. The legislation also directs the Department to examine the feasibility of adopting provisions of the American Bar Association Model Procurement Code. As the provision requires, the Department has consulted and worked with the UNC School of Government in preparing this report, particularly in conjunction with studying the differences between North Carolina law and the ABA Model Code and the practicality of adopting the Model Code. The Department and the School of Government are in agreement on the recommendations in this report.

Summary

This Study has involved reviewing the provisions of North Carolina procurement law and administrative regulations and comparing them to the ABA Model Procurement Code provisions, both individually and as a whole. Current State procurement law generally is sufficiently comprehensive and provides adequate oversight authority over the State's purchase of goods and services. Although organized differently, the substance of State law and the Model Code is substantially similar in process and effect. The Model Code is stronger in some areas such as providing a greater variety of definitions of terms, and the Code includes a number of ethical standards for all procurement personnel. It also delegates greater authority to the Chief Procurement Officer.

North Carolina purchasing law provides greater flexibility in structuring the management and operations of the procurement function in State government by authorizing the Secretary to promulgate Administrative Code regulations governing particular details that the Model Code includes in its statutory structure. In fact, the North Carolina Administrative Code contains regulations very similar to the comparable Model Code provisions, but because these requirements are within the regulatory authority of the Secretary, they may be adapted more easily to changes in needs and circumstances than statutory requirements—any modification of which must be submitted to the legislative process. A cross-reference between the State's procurement laws and regulations and the ABA Model Procurement Code is attached as an Appendix to this Report.

Due to the similarity between current State procurement law and the Model Code, no compelling reason exists to replace the existing law with the Model Code. Any improvement in organization and clarity is outweighed by the displacement and confusion created by moving to a new regime, as well as the expense of the retraining effort for State personnel and the State's vendor community.

Nevertheless, the Model Code does include several matters that—if comparable provisions existed in North Carolina—would better clarify parts of the procurement process and the responsibilities of personnel and agencies involved in the procurement process. This report makes recommendations for modifications to procurement procedures and rules in seven areas. One of these recommendations

would require legislative action to accomplish. The others can be implemented through changes in the Administrative Code, which DOA is involved with updating as part of its ongoing Procurement Transformation process.

These specific recommendations, and the means of implementing each of them, are set out below:

- 1) Define relevant procurement terms (Administrative Code).
- 2) Describe general principles for determining and evaluating costs of bids (Administrative Code).
- 3) Create a more formal and practical procedure for determining protests (Administrative Code).
- 4) Develop debarment and poor performance penalties that accord with due process principles (Administrative Code).
- 5) Establish ethical standards for conducting all procurement-related activities (Administrative Code).
- 6) Enact limitations on post-employment activities related to involvement by former State personnel in with procurements and contracts related to their public positions or duties, in order to reduce potential use of insider information about State plans and needs and to avoid the appearance of conflicts of interest (Legislative Action).

North Carolina Statutory and Regulatory Organization and Content

The North Carolina statutes for State departments, institutions and agencies to purchase goods and services are contained in Chapter 143, Article 3 of the General Statutes (G.S. 143-48 *et seq.*).¹ The Secretary of Administration is given authority over all purchases of goods and contractual services and is also authorized to adopt rules applicable to all aspects of the procurement process (G.S. 143-53). The administrative regulations for procurement are in Title 1, Chapter 5 of the N.C. Administrative Code (01 NCAC 05A .0101 *et seq.*). The day-to-day administration of the procurement process is delegated to the State Procurement Officer, who is Director of the Division of Purchase and Contract (the Division) in DOA (01 NCAC 05A .0101).

Unless expressly authorized in the statutes or administrative rules, purchases are to be made through competitive bidding procedures. (G.S. 143-52). The Secretary is authorized to establish procedures for competitive bidding, as well as for use of reverse auction, negotiation, best value procurements, cooperative purchasing, (G.S. 143-49); limits for small purchases, (G.S. 143-52 and 01 NCAC 05B .0301; and for emergency purchases, (G.S. 143-57). The Secretary also sets general conditions under which competition may be waived, when justified. (G.S. 143-49 and 01 NCAC 05B .1401). The Secretary may require all State government units to furnish estimates of required goods and services and to report on actual purchases of goods and services. (G.S. 143-51).

¹ Various exceptions and independent authority for making certain purchases are included in various other General Statute provisions, most notably in Chapter 147, Article 3D (Information Technology-related purchases) and Chapter 136, Article 2 (Highway construction-related purchases). Additional purchasing statutes, principally applicable to building construction work and local government procurements are found in Chapter 143, Article 8.

The State Purchasing Officer (SPO) is authorized to determine bid value benchmarks; that is, amounts below which an agency is authorized to make purchases without approval by the Secretary, and to review and decide protests of contract awards greater than \$25,000. (G.S. 143-53). The SPO also must approve the review of all contract award recommendations greater than an agencies' benchmark and all requests for waiver of competition for purchases greater than \$10,000. (*Id.*). As Director of the Division, the SPO supervises the development of specifications for particular products (which must promote economy, encourage competition and not be unduly restrictive), the creation of standard forms and contract terms and conditions, the establishment and administration of statewide term contracts for goods and services that all agencies must use, the approval of all agency requests for exception to, waiver of or special authority to vary a standard policy or procedure, and the oversight and review of agency compliance with procurement law and rules.

Solicitations greater than \$5,000 must be competitively bid, standard solicitation documents used and advertised properly. Purchases less than \$5,000 may be solicited informally or through requests for quotes. Solicitation responses (offers) must be publically opened and tabulations posted as soon as reasonably possible thereafter. Unexecuted offer must be rejected. All offers may be rejected in whole or in part, if in the best interest of the State. All awards must be posted within 3 days after final approval.

All contracts are required to include the standard language approved by the SPO (which includes the North Carolina Standard Contract Terms and Conditions), a certification by the contractor of non-collusion, a provision acknowledging that the contract is subject to the availability of funds, a provision permitting an audit of the contractor's records by the State's auditors, a certification that the contractor complies with State law regarding employee work eligibility and a term providing that the contract is governed by North Carolina law and will be interpreted and enforced in the courts within North Carolina.

The Contract Management Section of the Division provides legal support for procurement activities and assists in the preparation of, and must review, all proposed contracts for the purchase of goods and services greater than one million dollars. (G.S. 143-52.1).

Use of the State's procurement processes for private gain is prohibited. (G.S. 143-58.1). A vendor is prohibited from offering and State employees involved in procurement are prohibited from receiving any gift or other favor. (G.S.133-32).

ABA Model Code Organization and Content

The ABA Model Procurement Code is organized into 12 Articles, or sections.² Under Article 1, the Model Code applies to all state expenditures of public funds. This article sets out those general policies

² This Report does not review and evaluate the provisions of Article 5 (Construction-related) and Article 11 (Small and Disadvantaged businesses) because responsibility for those functions lie in different Divisions and are currently being evaluated separately for possible legislative action.

underlying the Code's provisions, and it defines many of the important procurement terms utilized in the following sections.

Article 2 establishes the centralized organization of the procurement function and the authority of the Chief Procurement Officer (CPO), and it provides for an optional Policy Board that would set policy, promulgate regulations and monitor procurement operations. Under the Model Code, the CPO is appointed by the Governor for a term of years and may be removed only for just cause. The CPO is provided authority to adopt internal operating procedures for the procurement office, supervise procurement of all goods, services and construction; supervise and control all supply inventories, dispose of surplus property, establish programs for the inspection, testing and acceptance of all purchases; to oversee compliance with all procurement laws and regulations and to adopt regulations (if no Policy Office is established). The CPO also is authorized to collect procurement data from agencies and to establish an institute to provide procurement training and research.

Article 3 identifies approved methods of source selection, including sealed bids, sealed proposals, small purchases, sole source procurements, emergency purchases, special procurements and architectural and engineering services. If any non-competitive method is used, a documented justification for its use is required. This Article also provides for the cancellation of solicitations and rejection of any or all bids, if it is in the best interest of State to do so, and it requires that the reason on for doing so must be documented.

Article 4 provides for the development of specifications under the general supervision of the CPO. All specifications, however developed, must promote economy and competition and must not be unduly restrictive.

Post-contract issues are handled in Article 6, including requirements for modifying a contract, adjusting prices, terminating a contract for cause or convenience, for excusing lack of performance and for specifying liquidated damages.

Article 7 provides for the establishment of rules to determine what types of contractor costs may be reimbursed and the requirements for doing so.

In Article 8, the Model Code provides for rules to manage supplies and to dispose of surplus supplies.

Article 9 deals with contract and procurement-related disputes and specifies remedies for such disputes. This Article authorizes the CPO to decide protests of award decisions and to resolve any dispute concerning contract interpretation or performance prior to the filing of a legal action. It permits the CPO to debar or suspend a vendor after notice and an opportunity to be heard. The Article provides for the waiver of sovereign immunity in legal actions involving contract awards, debarment decisions and contract-related actions. Last, it establishes a protest appeals board to hear appeals from CPO protest and contract-related decisions.

Article 10 establishes requirements for co-operative purchasing, including conditions by which supplies and facilities, as well as personnel or services, may jointly be used or transferred among agencies.

Ethical standards are set out in Article 12. The Article provides that personal gain is inconsistent with the public trust and that any attempt either to obtain such gain by a government employee or to influence any employee to breach his or her trust is a breach of ethics. It identifies conflicts of interest and requires disclosure of any actual or potential conflict, with withdrawal of any affected employee from participation in the procurement. It also prohibits receipt of any gift or kickback to a public employee or use by an employee of confidential information. The Article bans dual employment by both the state and a vendor, and it disqualifies former employees from involvement in matters in which the employee participated while with the state (permanent) and other matters within the employee's scope of responsibility (one-year). Employees violating any ethical standard may receive a warning, suspension or termination and may be required to reimburse the state the value of any gain received. Vendors are subject to warning, contract termination, debarment and recovery of any value transferred for committing any ethical offense.

Feasibility of adopting the provisions of the ABA Model Procurement Code

With minor variations in scope and details of requirements, current State procurement law is very similar to the content of the ABA Model Code. The Model Code, having the advantage of no preexisting context, is better organized than the State's procurement law. For the same reason, however, the Model Code establishes a comprehensive statutory structure that North Carolina has largely developed through the administrative process. While there are some provisions in the Model Code that current State law lacks—chiefly in the area of procedures for protests and debarments, the clarity provided by express definitions of terms and a more comprehensive set of ethical standards—no compelling reason exists to entirely replace existing law with the Model Code provisions. Moreover, replacement of existing law would require major revisions to the Administrative Code, procurement procedures and solicitation and contract documents.

Those revisions themselves would require substantial resources, but an even larger effort would be necessary in order to retrain procurement personnel and the vendor community in the nature and significance of the changes, the differences in procedures and the use of new documents and forms. In addition, the transition would result in lengthening procurement times due to more detailed review for compliance with new processes, the need to correct inevitable mistakes and a higher number of defective award recommendations. Thus, the relatively minor improvements in organization and clarity would be outweighed by the displacement, confusion and resource commitment resulting from implementing a new regime.

Given the practical difficulties of adopting a version of the Model Code wholesale balanced against the modest overall improvements to procurement operations and procedures, the Department of Administration recommends that the State take specific provisions of the Model Code now lacking in North Carolina procurement law, and adapt them into existing law. The Department makes the following recommendations—all but one of which can be implemented through the administrative process. These modifications can be implemented prior to the next session of the General Assembly.

The Department is available and interested in assisting to develop legislation that addresses the one recommendation requiring legislative action.

Recommendations

1) Modify the Administrative Code to provide definitions of relevant procurement terms.

Currently, the Administrative Code includes few definitions, resulting in inconsistent terminology and variations in the meaning of terms used in solicitations. In addition, procurement personnel sometimes are uncertain about the meaning of terms in standard documents and templates. Additional definitions will improve the clarity and consistency of solicitations and the resulting procurement contracts.

2) Describe general principles for determining and evaluating costs of bids and other factors used in making award recommendations.

The administrative rules do not specify the factors and methodology that should or may be used in evaluating bids to determine an award recommendation. The lack of general principles results in inconsistency across agencies and between procurements within the same agency. In some cases this leads to a need to re-evaluate offers and in other cases to vendor protests. Greater clarity in the principles for evaluating bids will promote better understanding by State personnel and vendors, which will result in more accurate determinations of which offer will provide the best value to the State.

3) Create a more formal and practical procedure for determining protests of contract awards.

The Administrative Code provides for submission of protests and decisions on them by the SPO, but it specifies unreasonably short response times and lacks any administrative requirements for making the determination. The Administrative Code should be modified to create a reasonable process for deciding protests, which will enhance vendor respect for and confidence in the outcome.

4) Develop debarment and poor performance penalties that accord with due process principles.

Currently, the Administrative Code allows vendors to be debarred in the discretion of the SPO. No formal procedures exist to accord potential debarrees due process rights of notice and an opportunity to be heard. In addition, no evidentiary standards exist for debarment, which has led to debarment requests for subjective reasons or without any documentation of inadequate contractor performance. Addition of adequate debarment procedures and standards align the process with due process requirements and will give notice to State agencies of the documentation required to support a debarment request.

5) Establish ethical standards for conducting all procurement-related activities.

Existing ethical standards for personnel engaged in procurement activities are limited to receipt of gifts and to use of the public procurement procedures for private benefit. Other ethical standards are applicable only to a portion of procurement personnel. No generally-applicable ethical standards prohibit conflicts of interest by a State employee or his or her immediate family or require their disclosure. No ethical prohibition exists to prohibit use for private benefit of non-public information gained about procurement activities. Although criminal sanctions are available to punish these activities, express ethical standards create an atmosphere of professionalism, contribute to a trait of integrity and reinforce the view that public employment is a public trust.

6) Enact limitations on post-employment activities related to involvement by former State personnel in with procurements and contracts related to their public positions or duties.

State personnel often leave public employment for the public sector, and not infrequently find themselves involved in the provision of goods or services closely-related to their former duties for the State—which may include sales to their previous units and co-workers. While many of these former employees scrupulously avoid taking improper advantage of information and relationships developed while a State employee, it is sometimes tempting to use them consciously or unconsciously for unfair advantage. Whether or not actually used, competitors and third parties are quick to assume the worst when such situations arise. In order to reduce potential use of personal relationships or insider information about State plans and needs, and to avoid the appearance of conflicts of interest, the Department recommends that the General Assembly enact limitations on involvement by former State employees in matters related to activities they were involved in while working for the State, and, to a lesser extent in matters for which they had supervisory responsibility or oversight.

Comparison of ABA Model Procurement Code and North Carolina Procurement Requirements

ABA Model Code

North Carolina

Article 1 - General

Underlying policies (1-101)	Simplify, clarify and modernize procurement law; allow flexibility to develop policies and practices; consistency; increase public confidence in procurement activities; ensure fair and equitable treatment; increase economy and maximize purchase value of public funds; foster competition; maintain quality and integrity of system; obtain goods and services in a responsive and cost-effective manner.	Procurement should result in contracts that are the most advantageous to the State. (143-52). Competitive bidding procedures must promote principles of procurement efficiency, transparency, and fair competition to obtain the State's business (143-53.1). Procurement rules must promote sound purchasing management. (143-53).
Construction with other laws (1-102, 1-106 to 1-108))	Unless displaced by procurement statutes, UCC and general principles of law supplement procurement law; no part of procurement law implicitly repealed by subsequent legislation if any consistent construction possible.	General rules of statutory construction are identified in the General Statutes (G.S. 12-2 to 12-4). Otherwise, applicable N.C. contract law principles apply.
Good faith exercised by all parties (1-103)	Required.	Good faith required for goods purchases. G.S. 25-1-302.
Scope of applicability (1-104)	All State expenditures of public funds, regardless of source (except grants or contracts with other government entities).	All purchases of goods or services by State government, and all its departments, institutions and agencies. G.S. 143-49. P&C administration over purchases where public funds are involved.
Records of formal rulings/determination (1-201)	All formal rulings and determinations under law to be retained in central purchasing authority or agency purchasing records.	All public records must be retained in accordance with agency retention schedules.

Definitions (1-301)	Collected definitions of 26 significant terms.	No organized collection of definitions except for four definitions in 01 NCAC 05A .0112.
Public access to records (1-401)	All records available to public, unless statutorily exempt.	All public records available to public. G.S. 132-1 <i>et seq.</i>
Electronic transmissions (1-501)	Electronic media authorized, with standards for authenticity and security.	Electronic bidding authorized, G.S. 143-49; but not implemented.

Article 2 - Procurement Organization

Policy Office - membership (2-101)	3 members, appointed by Governor, plus CPO as <i>ex officio</i> .	Governance Committee, appointed by DOA Secretary, used as advisory group.
Policy Office - Duties (2-102)	Promulgate regulations; determine policy; audit and monitor implementation	Oversight of procurement functions, operations, policies and efficiency; issue recommendations for improvements.
Chief Procurement Officer (CPO) - Appointment (2-201 to 2-203)	CPO appointed by Governor for term of years, with removal only for "just cause."	CPO appointed by DOA Secretary; employment at-will.
CPO - Authority (2-204) and Delegation (2-205)	Authority to adopt internal operating procedures for procurement office; supervise procurement of all goods, services and construction; supervise and control all supply inventories; dispose of surplus property; establish programs for inspection, testing and acceptance of all purchases; authority over compliance with procurement laws and regulations. Authority to adopt regulations (if no policy office). May delegate authority to any designee.	Authorized to administer State procurement program, delegated from DOA Secretary. 01 NCAC 05A .0101. DOA Secy. Authorized to procure goods and services, establish specifications, supervise all storerooms and stores, operate procurement card program, establish and enforce term contracts and establish rules, regulations and procedures for agency use of State contracts. G.S. 143-49. Require reports of agency needs and actual purchases. G.S. 143-51. Establish procedures for bidding and awards to vendors, and benchmark amounts delegated to agencies. G.S. 143-52, 143-53.

Centralization of procurement authority (2-301)	All purchasing authority of any State entity transferred to Central Procurement Office.	All purchasing authority of any State entity transferred to DOA Secy. G.S. 143-50.
Contractual authority for legal services (2-302)	Only with approval required by law.	Consulting services contracts (incl. legal services) require Governor's approval. G.S. 143-64.20.
Exemptions (2-303)	Unless required by regulation, no CPO approval required for purchase of infrastructure-related purchases, works of art, published materials.	Secy. may exempt certain purchases from P&C review. All IT purchases and certain purchases by health care-related entities exempt. G.S. 143-56.
Regulations (2-401)	Regulations promulgated in accordance with APA; CPO shall not delegate power of promulgating regulations.	Rules and regulations must be approved in accordance with APA; G.S. Chap. 150B.
Data collection (2-501)	Authority to collect statistical data and to require agencies to submit reports; authority to require use of standard forms for procurement and reporting.	Secy authorized to require agencies to submit data. G.S. 143-51. Agencies must use solicitation forms established by P&C. 01 NCAC 05A .0108.
Advisory council (2-502)	CPO authority to create advisory group for consultation and recommendations and to conduct studies and make reports.	No comparable authority.
Institute (2-503)	Authority to establish training and research institute.	No comparable authority. CPO oversees procurement training function.
Legal counsel (2-601)	Legal counsel designated to advise CPO.	Contract management section to act as resource on contracting issues. AG representatives also available for counsel and legal representation.

Article 3 - Source Selection & Contract Formation

Definitions (3-101)	Definitions of relevant solicitation terms.	Types of solicitation documents defined. 01 NCAC 05B .0314.
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Methods of source selection (3-201 to 3-207)	Identifies methods of source selection: sealed bids, sealed proposals, small purchases, sole source, emergency, special procurements, architectural & engineering services. Non-competitive methods require documented justification for using.	Authorized methods include competitive bidding, reverse auction, negotiation, best value, cooperative purchasing, G.S. 143-49; small purchases, 01 NCAC 05B .0301; emergencies, G.S. 143-57. Conditions for waiver of competition identified. 01 NCAC 05B .1401.
Cancellation of solicitations (3-301)	Cancellation of solicitation or rejection of any or all bids permitted if in best interest of State; reason for doing so must be documented.	Any and all bids may be rejected. G.S. 143-52. Action must be made a matter of record. 01 NCAC 05B .0502.
Responsibility of vendors (3-401)	Bidder may be deemed nonresponsible, including for failure to respond to information request related to determining responsibility. CPO may maintain confidentiality of information provided.	No specific statutes or rules concerning determination of responsibility.
Prequalification (3-402)	Vendors may be prequalified for particular types of purchases.	Vendors' products may be prequalified as eligible to be offered in response to a solicitation. 01 NCAC 05B .0208.
Substantiation of offered price (3-403)	CPO may request bidders to substantiate reasonableness of bid, if no means to determine independently.	No comparable provision.
Types of Contracts (3-501)	Any type contract may be used, except cost-plus-percent of cost; cost reimbursement contract allowed only if only practical method and reasons documented.	Cost-plus contracts prohibited. G.S. 143-52.
Accounting method approval (3-502)	If State agrees to reimbursement of costs, prior to contract award vendor must document adequacy of method used to record cost data.	No specific statute or rule concerning documentation of reimbursable costs.

Multi-year contracts (3-503)	MYC permitted if term(s) specified in solicitation and 1st year funds available. Must include unavailability of funds term.	No contract greater than three years (including renewals) without CPO approval. Unavailability of funds clause required. G.S. 143C-6-8.
Right to inspect vendor facilities and to audit vendor records (3-601 and 3-602)	State has right to inspect any vendor facility related to contract performance and to audit vendor records related to costs or to contract performance.	State and agency auditors may audit vendor's records to verify accounts and data affecting fees or performance. G.S. 143-49.
Finality of determinations; standard (3-701)	Determinations made under Article 3 are final and conclusive, unless clearly erroneous, arbitrary, capricious or contrary to law.	Determinations affecting award subject to Protest and OAH contested case, under arbitrary, capricious or contrary to law standard.
Anticompetitive practices (3-702)	Evidence of collusion or other anticompetitive practices must be submitted to Attorney General.	Suspected antitrust violations must be reported to appropriate law enforcement authority. 01 NCAC 05B .1511.
Retention of records (3-703)	All procurement records maintained pursuant to records retention schedules.	All procurement records maintained pursuant to records retention schedules.
Records of noncompetitive procurements (3-704)	Contracts resulting from noncompetitive procurements maintained and annual report provided to legislature.	No reporting requirement for non-competitive contracts.

Article 4 - Specifications

Definition (4-101)	Specification: description of physical or functional characteristics or the nature of an item, and may include standards for ensuring compliant delivery.	No definition of specifications. Two types of specifications identified. 01 NCAC 05B .0201.
Standards to be established by regulation (4-201)	Rules set standards for development, maintenance and content of specifications.	Rules for development, adoption and use of specifications. 01 NCAC 05B .0202 <i>et seq</i> .
SPO responsibilities for specs (4-202)	CPO has general authority over preparation of and compliance with specifications.	Standard specifications developed and adopted by P&C. 01 NCAC 05B .0201

Specifications and using agencies (4-204 & 4-206)	Assistance to CPO in developing specs, and CPO may delegate authority to prepare an agency's own specs.	Agencies may develop specifications for specific solicitations. 01 NCAC 05B .0201.
Promote competition (4-205)	All specifications, however developed, shall promote economy and competition and shall not be unduly restrictive.	All specifications shall shall promote economy and competition and shall not be unduly restrictive. 01 NCAC 05B .0203.

Article 5 - Construction-related	<i>Not evaluated. North Carolina law does not provide CPO with authority over construction contracts. Within jurisdiction of State Construction Office.</i>
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Article 6 -Modifications & Terminations

Rules to be established for contract clauses concerning State's right to alter performance requirements (6-101)	Rules set required or permitted contract language re: price adjustments, periods of performance and other provisions concerning unilateral right of State to order changes in work within scope of contract or to order performance delays or temporary halts, as well as to handle variations be estimated and actual quantities.	No specific statute or rule concerning State's right to alter performance requirements.
Price adjustments (6-101)	Specifies allowable methods of post-contract price adjustments	No specific statute or rule concerning allowable methods of price adjustments. Standard RFP template term.
Additional required or permitted contract clauses set by regulation (6-101)	Language regarding liquidated damages, acts of God excuses, and termination for cause and convenience.	Secy authorized to establish standard solicitation/contracting language. G.S. 143-5301 and NCAC 05A. 0108.
Modifications to standard language (6-101)	Modifications of standard language permitted on documented justification for deviation.	Deviations from standard language if contract greater than \$5,000 must be approved by CPO. 01 NCAC 05B .0301.

Article 7 - Cost Principles

Allowable cost principles to be established by regulation (7-101)	Rules for determining what costs may be reimbursed to the vendor.	No specific statute or rule concerning allowable cost principles.
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Article 8 - Supply Management

Definitions (8-101)	Definitions of types of supplies.	Definition of goods. G.S. 143-49. Definition of commodities. 01 NCAC 05A .0112.
Inventory management regulations required (8-201)	Rules to manage supplies during entire life cycle and to transfer or dispose of excess/surplus supplies.	Secy may adopt rules for delivery, storage and distribution of goods. G.S. 143-60.
Allocation of proceeds from disposal (8-301)	CPO authorized to allocate proceeds received from disposal of surplus supplies.	Sale of surplus goods not within jurisdiction of CPO.

Article 9 - Legal & Contractual Remedies

Authority to resolve protests (9-101)	Scope of right to protest and procedures for deciding protest, finality of decision, stay of purchase during protest and costs to protestor. Written decision required.	Secy to adopt rules for award protests. G.S. 143-53. Written decision required for all protests. 01 NCAC 05B .1519.
Authority to debar or suspend (9-102)	May debar vendor up to 3 years, after notice and opportunity to be heard, for certain criminal violations, serious violation of contract provisions, recent record of unsatisfactory performance or ethical violation.	Debarment of Vendor for a period of time, at discretion of P&C.
Authority to resolve contract disputes (9-103)	CPO has authority to decide any controversy concerning contract at any point prior to lawsuit. Written decision required.	Implied authority for CPO to decide dispute regarding award, prior to OAH filing. No authority regarding contract performance or interpretation disputes.

Remedies for process errors, prior to award (9-202)	If determined solicitation or proposed award is erroneous, then revised, if possible, to comply with law and rules, or cancelled.	All award recommendations greater than delegation must be approved by CPO. Authority to require whatever remedial action necessary. G.S. 143-52.1.
Remedies for process errors, after award (9-203)	Contract may be terminated or ratified. If terminated in absence of vendor fraud or bad faith, then vendor compensated for actual expenses incurred, plus reasonable profit.	Contract entered in violation of procurement law or rules is void. Agency head personally liable for any cost incurred by State. G.S. 143-58.
Interest (9-301)	Interest on amounts due to vendor or to State is payable at statutory rate from date claim arose to date of final decision.	No requirement for interest payment, unless legal judgment.
Sovereign immunity waivers (9-401)	Sovereign immunity waived (damages and equitable relief) in legal proceedings concerning errors in awards, debarment decisions and in actions resulting from the contract.	Sovereign immunity waived for money damages under N.C. appellate decisions.
Time limits for initiating proceedings (9-402)	Within 14 days after final administrative decision concerning awards, within 6 months after final administrative decision concerning debarment and with 12 months after final administrative decision concerning contract disputes, or within statutory limitation period for contract actions.	Within 60 days after CPO protest decision, for administrative review. G.S. 150B-23. Within 30 days after OAH decision, for judicial review of OAH decision. G.S. 150B-45. Within 3 years of breach, for contract disputes. G.S. 1-52.
Protest appeals (9-501 to 9-511)	Establishes authority and procedures of a Procurement Appeals Board to determine appeals from protest and contract-related decisions.	No comparable provision.

Article 10 - Co-op Purchasing

Definitions (10-101)	Definitions of relevant terms.	No applicable definition.
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Authorization (10-201)	State agency may participate with any other government entity for purchase of goods and services, as long as the contract is competitively awarded.	Secy authorized to establish procedures for cooperative purchasing. G.S. 143-49.
Joint use of supplies and facilities (10-202 to 10-204)	Any agency may agree with another agency for transfer or joint use of supplies or for joint use of facilities.	No comparable provision.
Agency personnel or services (10-205 to 10-206)	Any agency may supply personnel or services to another agency, with costs to be reimbursed, with funds used as provided by law.	Loaned employee agreements handled under personnel procedures.
Co-op purchasing compliance (10-207)	Use of co-op purchasing cannot be used to circumvent procurement law.	Implicit in co-op purchasing procedures.
Collection of co-op purchasing data (10-208)	CPO authorized to collect purchase and spend data from any agency.	CPO authorized to collect purchase and spend data from any agency. G.S. 143-51.
Controversies involving co-op purchasing (10-301)	Controversies resolved under State law, if parties are subject to same law. If not, controversies resolved as parties may agree.	No comparable provision.

Article 11 - help to Small/Disadvantaged Businesses	<i>Not evaluated. North Carolina law does not provide SPO with authority over support for HUB businesses. Within jurisdiction of Office of Historically Underutilized Businesses.</i>
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Article 12 - Ethics

Definitions (12-101)	Definitions of relevant terms.	No procurement-specific statutes.
Public employment is public trust (12-201)	Policy is to balance protection of government integrity with facilitating employment of needed personnel, and it is implemented by prescribe essential standards of ethical conduct without creating obstacles to entering public	No comparable provision.

General conduct standards (12-202)	Personal gain is inconsistent with public trust, and attempt either to obtain such gain by a government employee or to influence any employee to breach trust is a breach of ethical standards.	Use of public position for private gain is ethical violation. G.S. 138A-31.
Criminal violations (12-203)	Civil sanctions for ethical violations in addition to any applicable criminal penalties.	No comparable civil provision. Certain prohibitions specify criminal penalties: private benefit from public contract (G.S. 14-234); misuse of confidential information (G.S. 14-234.1); gifts or favors from contractors prohibited (G.S. 133-32).
Conflicts of interest (12-204)	Any direct or indirect participation in a procurement by employee, if employee knows of any financial interest by employee or family in procurement, in business related to procurement or in prospective employment by such business.	Participation in furtherance of official action prohibited if public servant knows of financial benefit to public servant or family. G.S. 138A-36.
Duty to disclose (12-204 to 12-205)	On discovery, must disclose any actual or potential conflict of interest and withdraw from participation in procurement. Must disclose any benefit received.	No general conflict of interest disclosure requirement. Identity of economic interests of covered persons required to be filed annually. G.S. 138A-22.
Gifts and kickbacks (12-206)	Ethical breach to offer, give, seek or receive any gratuity in connection with any procurement. Ethical breach to make any offer, payment, gift as inducement to contractor for award of subcontract.	Gift to or receipt by State employee of anything of value prohibited. G.S. 133-32, 138A-32 and Executive Order 24 (2009).
Contingent fees to third-parties (12-207)	Ethical breach to pay or receive a percentage or contingent fee to solicit or secure a State contract.	Gift to or receipt of anything of value prohibited. See above.

Representations (12-206 and 12-207)	Each bidder must represent that there has been no gift, kickback or contingent fee paid or offered in connection with bid.	Included as standard contract provision.
Restrictions on employment (12-208)	No dual employment by State and vendor, permanent disqualification of former employee for matters in which former employee participated while State employee, one-year disqualification of former employee for matters within scope of responsibility while State employee and one-year bar against sales to State by former managerial employees.	No comparable provision.
Use of confidential information (12-209)	Ethical breach to use any confidential information gained while State employee.	Use of nonpublic information for private gain prohibited. G.S. 138A-34.
Remedies for ethical violations (12-301 to 12-303)	Warning, suspension, termination, recovery of value received authorized against employee after due process. Warning, contract termination, debarment, recovery of any value transferred authorized against non-employee after due process.	Implicit in general HR policies.
Ethics Commission (12-401)	Ethics Commission jurisdiction over implementation of ethical provisions.	Ethics Commission jurisdiction to conduct hearings and recommend sanctions. G.S. 138A-10.