V. PURCHASING METHODS

V-1 BASIC:

When the dollar amount of the expenditure is under an agency's delegation, they are authorized to acquire commodities, printing, and contractual services, by purchase, rent, lease, lease purchase, or installment purchase, subject to the procedures herein.

Once a need is determined by a user at an agency they should requisition the purchaser that has been assigned the responsibility of acquiring the needs of that agency. The commodity, printing, or contractual service needed will usually fall under one of the methods given below (For consultant contracts, see the Section entitled Consultant Contracts).

- Small Purchases (Section V-2)
- Open Market Contracts (Section V-3)
- Statewide Term Contract (Section V-4)
- Agency Specific Term Contract (Section V-4)
- Waiver of Competition (Section V-5)
- Emergency or Pressing Need (Section V-5)
- Correction Preference (Section V-6)
- Nonprofit Work Centers for the Blind and the Severely Disabled (Section V-6)
- Special Delegation (Section IV-2 & 3)
- Exemptions (Section IV-4)

V-2 SMALL PURCHASES:

A small purchase is defined as the purchase of commodities, services or printing, not covered by a term contract, involving an expenditure of public funds of five thousand dollars ($5,000) or less. The executive officer or his designee, of each agency shall set forth, in writing, purchasing procedures for making small purchases. The awarding of contracts for small purchases shall be the responsibility of the using agency. The SPO may require a copy of the small purchase procedures be sent to the Division of Purchase and Contract.

V-3 OPEN MARKET CONTRACTS:

An open market contract is for the purchase of a commodity, printing, or service not covered by a term contract, and when there is not a need for a waiver, special delegation, exemption, emergency or pressing need. Although waivers, emergencies and pressing needs do arise occasionally and special delegations and exemptions may be granted when justified and approved by the SPO, they are not referred to as open market contracts, even when competition is obtained. They are different in nature and have different approval processes and handling procedures as addressed in other sections of this manual. Open market contracts are to be established in accordance with the procedures in Section V-7.

V-4 TERM CONTRACTS:

A "term contract" is a contract intended to cover all normal requirements for a commodity, printing, or contractual service for a specified period of time based on estimated quantities only. It is also referred to sometimes as a "requirements contract" or "indefinite quantity contract". Term contracts are to be established under the procedures given in Section V-7.

There are two basic types of term contracts:
1. "Statewide term contract" that is handled only by P&C, which is for all agencies;
2. "Agency specific term contract" that an agency may handle for use by their agency if the commodity, printing or service is not covered by a statewide term contract, and the contract value does not exceed their delegation.

Most of the statewide term contracts for commodities list a minimum and maximum quantity (or dollars). Orders under the minimum quantity gives the agency more flexibility as to how to obtain what is needed. Orders that exceed the maximum quantity must be forwarded to P&C for handling. For needs that exceed the maximum, P&C will determine if the order should be placed with the contractor at the contract price, negotiate the price with the contractor, or solicit new offers for the requirement. In all cases, follow the instructions, which will vary by contract, or call the P&C purchaser for guidance.

If a waiver, emergency purchase or pressing need arises, a term contract supplier should be given the opportunity to satisfy the requirement, if the requirement is covered by a term contract and time permits such action.

V-5 Waivers and Emergencies

WAIVER OF COMPETITION:

Under certain conditions, and otherwise if deemed to be in the public interest, competition may be waived. Conditions permitting waiver include, but are not limited to, the following:

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

Although competition may be waived for proper cause, its use is required wherever practicable. Where waiver is contemplated, agencies 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, when the expenditure is less than their respective benchmark or delegation. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language, terms and conditions issued by P&C. Under an emergency or pressing need
situation, a solicitation document requesting or inviting an offer(s) shall be issued by the agency, including standard language, terms and conditions issued by P&C, unless circumstances prohibit their use. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding an agency's benchmark or delegation, but are subject to the approval of P&C, except where otherwise permitted by rule.

If the dollar value of an agency contract exceeds ten thousand dollars ($10,000), but is less than the agency's delegation, and the agency contemplates waiver of competition, then prior review by the Division is required, except were it qualifies as an emergency and time does not permit prior review. If the dollar value of a university contract exceeds ten thousand dollars ($10,000), but is less than the university's delegation, and the university contemplates waiver of competition, then prior review by the Division may be requested by the university. The agency shall, or the university may, submit their request for this review via a requisition (or in some other acceptable format), which shall include a description of the requirement, the amount of the expenditure, the recommended vendor, and the justification for the waiver; and shall provide any additional documentation and justification deemed necessary by the SPO for conducting a thorough review.

**EMERGENCY AND PRESSING NEEDS:**

An agency may make purchases of commodities, printing 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; while emergencies are defined as situations which endanger 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, printing or services.

Agencies 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, including standard language, terms and conditions issued by P&C, unless circumstances prohibit their use.

When emergency or pressing need action is necessary, and the expenditure is over the agency's benchmark or delegation, prior approval shall be obtained from P&C if time permits.

If the expenditure is over $10,000 for agencies (regardless of their delegation), or over a university's benchmark, an explanation of the emergency or pressing need purchase shall be reported in writing to P&C. P&C shall report such purchases of commodities and printing to the Board of Award as a matter of record.

**V-6 PREFERENCES:**

1. **Nonprofit Work Centers for the Blind and the Severely Disabled:**

   Agencies may purchase goods and services directly from a nonprofit work center for the blind and severely disabled as long as,
   
   a. the purchase of goods does not exceed the agency delegation, and
   b. the goods or services are not available under a term contract, and
   c. the goods or services must be of suitable price and quality, as determined by the agency.

   Competition is not required when making a purchase from a nonprofit work center for the blind and severely disabled. Nonprofit work centers for the blind and severely disabled may still submit offers for contracts.
2. Department of Correction:

North Carolina has a preference statute (G.S. 148-70) that controls the sale of prison industry products and prohibits their sale to the private sector. All agencies shall give preference to Department of Correction products in purchasing articles, products, and commodities which are needed and which are manufactured or produced within the State prison system and offered for sale to them by the Department of Correction. This preference requirement also applies to all community colleges (except printing) and local school administrative units (except food and supplies for school food services and printing).

Products available from the private sector, including those on term contracts, shall be purchased only when it is determined that the Correction Enterprises product will not satisfy the requirement or will not be available when needed. Correction Enterprises is required to keep the price of products substantially in accord with that paid by governmental agencies for similar products of equivalent quality.

V-7 Procedures and Records:

Except where a waiver, small purchase, special delegation, exemption, emergency or a pressing need is permitted by rule, all purchases involving the expenditure of public funds made by agencies for commodities, services and printing, not covered by statewide term contracts, shall comply with the following delegations and procedures. The two exceptions to this are when you buy from either the Department of Corrections or from a Nonprofit Work Center for the Blind and the Severely Disabled (See Section V-6).

For purchases made by an agency involving an expenditure of public funds over $5,000, up to the general delegation limit:

1. Competition shall be solicited;
2. Solicitation documents requesting or inviting offers shall be issued; and
3. Solicitation documents shall include standard language, including terms and conditions issued by P&C, unless prior written approval is obtained from the P&C. If additional terms and conditions are used, they shall not conflict with P&C's standard terms and conditions, unless prior written approval is obtained from P&C.

In addition, agencies and universities shall advertise their solicitations on P&C’s Interactive Purchasing System (IPS) via the internet for the following purchases:

1. Agencies: For purchases involving an expenditure of public funds exceeding $10,000, up to their general delegation limit.
2. Universities: For purchases involving an expenditure of public funds exceeding $25,000, up to their general delegation limit.

Agencies and universities may advertise solicitations on smaller dollar purchases through P&C.

The awarding of contracts under general delegation shall be the responsibility of the using agency.

PROCEDURES/RECORDS

Where the total requirements for commodities, services or printing jobs involve an expenditure of public funds in excess of the agency’s general delegation, the competitive bidding procedure as defined in G.S. 143-52 shall be utilized as follows:
1. Sealed offers for commodities and printing shall be solicited by P&C via advertisement;
2. For service contracts, the SPO delegates to agencies the authority to solicit sealed offers for their agency in accordance with the procedures outlined above. After opening and completing the evaluation of offers received, the agency shall prepare a written recommendation for award, and if over the agency's general delegation, shall submit a copy of all offers received and their recommendation of award or other action to P&C for approval or other action deemed necessary by the SPO (Examples: cancellation, negotiation, etc.). Notice of P&C's decision shall be sent to the agency. The awarding of contracts for services shall be the responsibility of the using agency.

Sealed offers for statewide term contracts for commodities, printing and services shall be solicited by the P&C via advertisement.

For service contracts handled by an agency, the agency shall prepare a task description of the services and desired results. Task descriptions shall contain all of the following:

1. The date(s) of service (The contract shall not be for more than three years including extensions and renewals, without the prior approval of P&C);
2. Detailed specifications or type and level of work required;
3. What the State shall furnish;
4. What the contractor shall furnish;
5. The method, schedule, and procedures for billing and payments; and
6. Other subject matters bearing on the conduct of the work.

Rules applying to service and printing contracts do not apply to local school administrative units or community colleges.

**NOTE:** All agencies shall use the Invitation for Bids (IFB) or the Request for Proposals (RFP) document, whichever is applicable, when soliciting competition on contracts valued over $25,000. The IFB and RFP solicitation documents used by agencies shall require bidders or offerors to certify that each bid or offer is submitted competitively and without collusion.