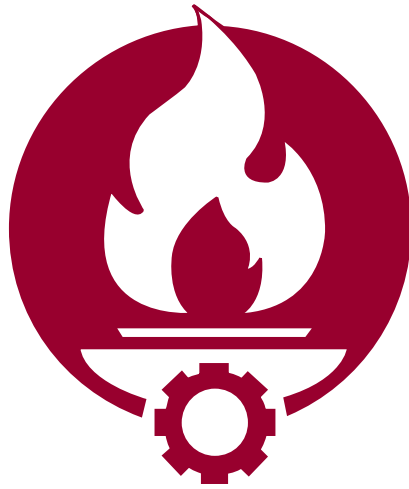




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RICHMOND
COMMUNITY COLLEGE

Purchasing & Equipment Manual

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MISSION STATEMENT

The RCC Purchasing Department represents the college in the purchase of goods and services at the most favorable prices, terms, and conditions to support the needs of our faculty, staff and students.

The above mission statement is in no means the only focus of the RCC Purchasing Department. The RCC Purchasing Department also supports all aspects of the college, including; disposal of property and reissuing property across the college campuses, tracking assets in the Colleague system, overseeing the transfer of equipment, entering new equipment, and entering surplus property into the Colleague system.

This manual should be used as a general guideline and not considered as a legal document. The laws and policies in these areas do change from time to time. As they change, we will try to keep you posted by updating this manual to keep it current. Any suggestions for improvements or additions to this manual will be appreciated.

TABLE OF CONTENTS

<u>Introduction</u>	5
<u>Definitions</u>	6
<u>Acronyms and Abbreviations</u>	8
<u>Purchasing Behavior</u>	9
<u>Ethics</u>	9
<u>Integrity</u>	9
<u>Responsibility</u>	10
<u>Purchase Order Delegations</u>	10
<u>IT Purchases</u>	10
<u>Non - IT Purchases</u>	10
<u>Purchases > \$100,000.01</u>	10
<u>Purchases \$31,000.01 to \$100,000</u>	11
<u>Purchases < \$31,000.01</u>	11
<u>E-Quote</u>	11
<u>Purchasing Flexibility</u>	13
<u>Special Circumstances</u>	14
<u>Emergency/Pressing Need Purchases</u>	16
<u>Procurement Cards (P-Cards)</u>	17
<u>Sole Source Vendors</u>	18
<u>Professional Service Agreements & Contracted Services</u>	19
<u>Changes to Purchase Orders</u>	20
<u>Equipment/Service Demonstrations</u>	20
<u>Evaluation of Equipment</u>	20
<u>Returning Product to Suppliers</u>	21
<u>Maintenance/Service Contracts</u>	21
<u>Procedure</u>	21
<u>Equipment Repair Orders</u>	22
<u>Printing</u>	22
<u>Direct Purchasing/Payment Procedures</u>	23
<u>Direct Purchasing Procedures</u>	23

<u>Printing, Rentals, Leases, and Services</u>	24
<u>Scope</u>	25
<u>Contracting Requirements</u>	25
<u>Approval and Documentation</u>	25
<u>Files</u>	26
<u>Advertising</u>	26
<u>Specifications</u>	27
<u>Vendor Protest Procedures</u>	27
<u>End-User Disputes</u>	28
<u>Construction vs. Standard Purchase Determination</u>	29
<u>Equipment</u>	29
<u>Donated Equipment/Property</u>	30
<u>Disposals</u>	30
<u>Movement of Equipment</u>	30
<u>Physical Inventory</u>	31
<u>Equipment Repairs</u>	31
<u>Under Warranty Repairs of Equipment</u>	31
<u>Out-of-Warranty Repairs of Equipment</u>	32
<u>Library Books</u>	33

APPENDIX

<u>Required Reporting</u>	34
<u>Resources</u>	34
<u>End User Responsibilities (Maintenance & Service Contracts)</u>	34
<u>Specification Guidance</u>	36
<u>Historically Underutilized Businesses</u>	30
<u>Forms</u>	36
<u>North Carolina General Contract Terms and Conditions</u>	37

INTRODUCTION

This section is intended to provide you with the general rules needed to prepare a purchase requisition. It applies to the acquisition of all equipment, materials, supplies, printing, and services, through outright purchase, rental, lease, or lease-purchase.

All community colleges are required by General Statute §115D-58.5 to purchase all supplies, equipment and materials by contracts made by or with the approval of the Division of Purchase and Contract (P&C) of the Department of Administration unless excepted otherwise.

The State's purchasing program is based on sound competitive purchasing procedures.

Price is not the only consideration in seeking competition. Other factors include terms and conditions, delivery schedules, lead times, types and degrees of service required, inspection and testing procedures, transportation and delivery costs, warranties and guarantees required, etc.

Price is only one factor considered
in seeking competition.

DEFINITIONS

AGENT: A person who, by express or implied agreement, is authorized to act for the institution in business dealings with a third party.

AGREEMENT: ("Meeting of the Minds") resulting from an offer and an acceptance.

BUYER: Authorized agent of the institution to buy, purchase or enter into contract with a supplier.

COMMODITIES: Any like group of equipment, materials, or supplies.

COMPETITION: The fair and open solicitation of offers from more than one source; the receipt of offers from more than one qualified source.

EMERGENCY: A situation which endangers lives, property, or the continuation of a vital program and which can be rectified only by immediate on-the-spot purchase (or rental) of equipment, supplies, materials, printing, or contractual services.

EQUIPMENT: An item that represents an investment of money that can be capitalized. The "stand-alone" item retains its original shape and appearance with use and does not lose its identity through the incorporation into a different or more complex unit or substance.

The State categorizes a piece of capitalized equipment as being one single item totaling over \$5,000 per item, all in-cost, which includes purchased price, applicable tax and shipping charges.

INVITATION FOR BID (IFB): The formal advertised written solicitation document used by the Division of Purchase and Contract for seeking competition and obtaining offers.

LEASE: A contract conveying use of a commodity for a designated period of time in return for established periodic payments.

LEASE-PURCHASE: (Conditional Sales Contract) A contract in which the established periodic payments are applied to fulfill the payment obligations for ownership of the commodity.

NEGOTIATION: The act of making a purchase, lease, lease-purchase, or rental agreement, by an authorized agent of the institution under the following conditions:

- When all offers have been rejected,
- When the use of the standard solicitation document is not appropriate,
- Where there is a sole source,
- When an emergency or pressing need arises.

OFFER: The term may refer to a proposal, quote, or bid submitted in response to a Request for Proposal, Request for Quotation, Invitation for Bid, or Negotiation.

OPEN MARKET CONTRACT: A contract for the purchase of a commodity or contractual service not covered by a term contract.

PRESSING NEED: A need arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, and which can be rectified only by immediate on-the-spot purchase (or rental) of equipment, supplies, materials, printing, or contractual services.

PURCHASE: The act of acquiring a needed item or service by an authorized agent of the institution and/or the acceptance of an offer to sell, lease, lease-purchase, or rent. An item or contractual service acquired because of a valid agreement between an authorized agent of the institution and a seller.

PURCHASE REQUISITION: "Initial Order Request" or "requisition" refers to an in-house form used to describe items for purchase to the appropriate supervisor. It shows the vendor name, address, description, quantities, cost, etc.

PURCHASE ORDER: A formal document sent to the chosen vendor which conveys quantities, descriptions, instructions, the College's billing address, "ship to" address, etc. A fully completed purchase order, when presented to the vendor, is a legal and binding document.

RENTAL: A contract for the right to use a commodity for a period of time, usually with payments made at intervals over the period of use, and normally providing for short notice of cancellation.

REQUEST FOR PROPOSALS: An alternate acquisition method to the IFB; customarily used for quotation of services.

REQUEST FOR QUOTE: An informational written procurement document used for seeking competition and obtaining offers.

SOLE SOURCE: When an item or service is available from only one source.

STATE TERM CONTRACT: A state term contract is handled by the Division of Purchase and Contract for all agencies and institutions of the state, unless exempted by statute, rule, or special terms and conditions specific to the contract.

TERM CONTRACT: A term contract is generally intended to cover all normal requirements for the commodity or contractual service, for a specified period of time, based on estimated quantities only. Term contracts are sometimes referred to as "contract", "requirements contract", or "indefinite quantity contract".

ACRONYMS AND ABBREVIATIONS

ASAP	As soon as possible
ARO	After arrival of order
HUB	Historically Underutilized Business
IFB	Invitation for Bid
NCCCS	North Carolina Community College System
P&C	Purchase and Contract Division
QPL	Qualified Products List
RCC	Richmond Community College
RFQ	Request for Quote
RFP	Request for Proposals
STC	State Term Contract
SPO	State Purchasing Officer
U/M	Unit of Measure
VP	Vice President

PURCHASING BEHAVIOR

Ethical practices are a major concern in the realm of public purchasing. While laws and rules mesh to provide a mechanism for public purchasing, only people can make it work. Impediments to the process must be detected early and safeguards provided at all levels.

ETHICS

All public, purchasing personnel shall be entirely cognizant of the necessity of ethical behavior.

Everyone¹ involved in the purchasing process is held accountable to the following principles and standards of purchasing practice (this applies to every person who engages with a supplier at any level, for any reason):

1. The purchasing power of the State shall not be used for personal advantage or gain². Employees or other individuals will not process institutional orders for personal ownership.
2. Avoid the intent and appearance of unethical or compromising practice in relationships, actions and communications.
3. Refrain from any private business or professional activity that would create a conflict between personal interests and the interests of the institution.
4. Refrain from soliciting or accepting money, loans, credits or prejudicial discounts and acceptance of gifts, entertainment, favors, or services from present or potential suppliers which might influence, or appear to influence purchasing decisions.
5. Do not discuss with suppliers: trade secrets as determined by North Carolina law or information relative to the development of a contractual document (RFQ, IFB, RFP, Waiver of Competition, Negotiation, Specification Development, etc.).

INTEGRITY

Fairness and impartiality in all phases of the process are essential ingredients in public purchasing. Integrity is manifested through fairness, openness, honesty, objectivity, and impartiality.

Similar to other service organizations, the RCC Purchasing Department's justification is the quality of the service it renders. The purchasing process cannot be both effective and self-serving; the two are incompatible. Fairness is required in expending public funds. No matter how strongly a user may prefer a particular product or service to others, equivalent products and services must be given every reasonable consideration.

¹ "Everyone" involved in the purchasing process applies to every person who engages with a supplier at any level, for any reason. This includes, but is not limited to: requests for products information, inquiries into pricing, design, repairs, replacements, quote information, or generating a requisition for purchase.

² "Private advantage or gain" refers to using the association of the State or RCC to receive products, favors, services, or discounts for personal use.

RESPONSIBILITY

If any institution contracts for the purchase or lease of any commodities, printing, or services *contrary to statutes or rules*, such contract/purchase shall be void and of no effect.

If any unauthorized agent of an institution contracts for the purchase or lease of any commodities, etc., such contract shall be void and of no effect. In addition, anyone making such illegal purchases is personally liable for the costs incurred.

PURCHASE ORDER DELEGATIONS

DOLLAR LEVEL OF AUTHORIZATION

\$100,000.01 and greater: (IT products and services) purchases must be referred to the Statewide IT Procurement Office for an Invitation for Bid or requests for waiver by the RCC Purchasing Department.

\$31,000 or less: (IT Products and services) purchases require no written solicitation of competition. Users are required to seek a quote.

\$100,000.01 and greater: (Non IT, Non State Contract Items) purchases must be referred to the Division of Purchase and Contract for an Invitation for Bids or Requests for waiver by the RCC purchasing department.

\$31,000.01 - \$100,000 (Non IT, Non State Contract Items) purchases require written solicitation of competition. These written solicitations, or requests for quotations (RFQ), must be generated by the RCC Purchasing Department.

\$31,000 or less (Non IT, Non State Contract Items) purchases require no written solicitation of competition. Users are encouraged to seek a quote.

NON IT PURCHASES > \$100,000.01 (including shipping, set up, and sales tax)

These purchases must be referred to the Division of Purchase and Contract (P&C) for an Invitation for Bid or request for waiver of competition, generated by RCC Purchasing Department. P&C is authorized by Administrative Rule to inquire into the need for, and the level of quality of, the items and services requested.

1. IFB - Invitation for Bid

- When the Division of Purchase and Contract (P&C) receives the purchase requirements, specifications are reviewed for completeness and accuracy. Minimum IFB cycle time depends on the specifications or complexity of requirements.
- After bids are posted and proposals are received, an evaluation team (determined prior to posting) comprised of RCC employees will review all applicable proposals. After all proposals have been reviewed, a recommendation to award will be made by the team.
- Once RCC recommends a supplier for award, a written request will be presented to P&C for approval.

2. Request for Waiver - Depending on the circumstances, a written request for waiver of competition can be submitted to P&C for approval. It is imperative that a strong case be made before such request is forwarded. The RCC Purchasing Department will work with requestor to determine if the request for waiver is justified.

IT PURCHASES > \$50,000.01 (Including Shipping, set up, and sales tax)

These purchases must be referred to the Statewide IT Procurement Office (IT), IT-related Items for an Invitation for Bid or request for waiver of competition generated by RCC Purchase Department.

1. IFB – Invitation for Bid

- When the Statewide IT Procurement Office receives the purchase requirements, specifications are reviewed for completeness and accuracy. Minimum IFB cycle time depends on the specifications or complexity of requirements.
- After bids are posted and proposals are received, an evaluation team (determined prior to posting) comprised of RCC employees will review all applicable proposals. After all proposals have been reviewed, a recommendation to award will be made by the team.
- Once RCC recommends a supplier for award, a written request will be presented to the Statewide IT Procurement Office for approval.

IT PURCHASES <\$100,000 (Including shipping, set up, and sales tax)

These purchases are considered “Small Purchases” and do not require any written solicitation of competition. Users are required to seek a quote.

NON IT PURCHASES \$29,000.01 to \$50,000 (Including shipping, set up, and sales tax)

These purchases require 3 quotes. It is recommended that Requests for Quotations (RFQ), be generated by RCC Purchasing Department that include terms and conditions applicable to the requirement(s). The RFQ will be submitted to the appropriate vendors. User may obtain 1 quote and submit an E-P requisition. Users are also required to include 2 or more vendors (name & email) in the comments of the requisition.

Once bids are received, the RCC Purchasing Department will review and analyze the results. We may contact the using department for input. All transactions must be documented. This includes a record of all quotes received and written reason for award to other than low quote. Written justification for waiver, emergency and pressing need transactions shall also be made a matter of record. The final decision for contract/purchase award rests with the RCC Purchasing Department.

NON IT PURCHASES < \$29,000.01 (Including shipping, set up, and sales tax)

These purchases require no written solicitation of competition. User are required to seek a quote and attached to the E-P Requisition.

Products or services purchased from a NC State Term Contract (STC) do not require the Purchasing Department to solicit formal competition or the employee to obtain informal competitive quotes. STCs are contracts awarded by P&C and NC DIT for products and services most commonly and frequently used by NC agencies and institutions.

Vendors who have been awarded STCs have already participated in a competitive bid process. Therefore, seeking additional competition is not required. However, sometimes multiple vendors have been awarded a STC for the same type of products or services. In these situations, employees may compare pricing and services offered by both vendors within the framework of the STC and choose which vendor best matches their requirements.

E-QUOTE

E-Quote is an electronic tool for informal solicitations to numerous vendors at once and can be used to receive and respond to informal quotes electronically. E-Quotes may be used for solicitations under \$10,000 and replaces the manual quote processes (phone, fax, etc). It is a compilation of suppliers registered with the State of North Carolina to receive invitations to quote on goods and services.

Lack of Competition

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

****Purchase requirements cannot be divided in order to keep them under the established delegation amount****

When an item being requested is available only from a "sole source" or the item being purchased is "brand specific", justification must be presented to the Director of Purchasing in writing for this purchase. The Director of Purchasing will present the justification to the Division of Purchase and Contract to ask for a waiver of competition, based on the facts presented. When certification (approval) is received from P&C, the requestor will be notified to prepare an E-Procurement requisition. Vendors of sole source item(s) will be required to sign an RFQ. This requires the vendor to agree to the state's Terms and Conditions. The lead time required for this type of purchase is 60-90 days. **No exceptions due to fund source.**

Returning Products to Supplier

The RCC Shipping and Receiving must be notified prior to returning or exchanging any merchandise to a supplier within **48 hours** of receiving the merchandise. Equipment Inventory must be notified if equipment is being returned. Permission to return must be granted by the supplier. Information required to obtain return authorization includes, but is not limited to:

- 1) Purchase Order #
- 2) Item number on the PO
- 3) Description of item to be returned
- 4) Quantity to be returned
- 5) Reason for return
- 6) Replacement or refund requested

PROTEST PROCEDURES

When an offeror wants to protest a contract awarded by Richmond Community College valued at over ten thousand dollars (\$31,000), Richmond Community College shall comply with the following:

The offeror shall submit a written request for a protest meeting to the Purchasing Department at RCC within 30 consecutive calendar days from the date of the contract award. The Purchasing Department shall furnish a copy of this letter to the SPO within 5 consecutive calendar days of receipt. The offeror's letter shall contain specific reasons and any supporting documentation for why they have a concern with the award. If the letter does not contain this information, or if the Purchasing Department determines that a meeting would serve no purpose, then the Director of Purchasing 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. A copy of RCC's letter shall be forwarded to the SPO.

If the protest meeting is granted, the Purchasing Department 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 Purchasing Department shall respond to the offeror in writing with the decision.

Richmond Community College shall notify the SPO, in writing, of any further administrative or judicial review of the contract award.

According to state law, purchase *requirements cannot be divided in order to keep them under the established expenditure delegation amount.*

According to state law, *no one may purchase any supplies, materials, equipment or services covered by a statewide contract from any other sources.*

NC Community Colleges do have the flexibility option to purchase outside of a state term contract, but *only if the vendor can beat the state term contract by at least 1¢.* [G.S. 115D-58.14](#)

NOTE: Governor Beverly Perdue issued Executive Order ([50](#)), effective March 1, 2010, to encourage North Carolina companies to do the following:

1. Do business with the State of North Carolina
2. Stimulate economic development
3. Create jobs in North Carolina

Purchasing Flexibility – [G.S. 115D-58.14](#)

- a. Community colleges may purchase supplies, equipment, and materials from noncertified sources that are available under State term contracts, subject to the following conditions:
 1. The purchase price, including the cost of delivery, is less than the cost under the State term contract;
 2. The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1; and
 3. The items are the same or substantially similar in quality, service, and performance as items available under State term contracts.
- a1. Notwithstanding the provisions of this section, a community college may purchase, in any lawful manner, an item that is neither available under State term contracts nor substantially similar to an item available under State term contracts.
- b. The State Board of Community Colleges and the Department of Administration shall jointly adopt policies and procedures for monitoring the implementation of this section, including without limitation (i) definitions of substantial similarity, (ii) the content and frequency of reports and audits of such purchases, and (iii) a process for identifying any term contract existing as of October 1, 2009, with respect to which the exercise of purchasing flexibility could constitute a breach of that contract.

In the formation of each new term contract entered into after October 1, 2009, the Department of Administration shall, in its discretion, either provide in the contract for the purchasing flexibility set out in this section or make the term contract inapplicable to community colleges.

- c. The State Board of Community Colleges, in consultation with the Department of Administration, shall review the purchasing process for community colleges and may increase or decrease the purchasing/delegation benchmark for each community college based on the college's overall capabilities, including staff resources, purchasing compliance reviews, and audit reports. The State Board may, in its discretion, reduce a community college's purchasing/delegation benchmark at anytime. The State Board shall not increase a community college's purchasing/delegation benchmark by more than fifteen percent (15%) in any calendar year without the concurrence of the Department of Administration within 60 days of submission. The maximum purchasing/delegation benchmark for a community college shall be one hundred thousand dollars (\$100,000). (1998-68, s. 2; 2005-103, s. 5; 2009-132, s. 1.)

SPECIAL CIRCUMSTANCES

EMERGENCY/PRESSING NEED PURCHASES

There are some instances that require making a FAST purchase – without waiting for a requisition to make its way through the purchase order process. The State defines these types of purchases to be Emergency Purchases or Pressing Need Purchases.

EMERGENCY: a situation which endangers lives, property, or the continuation of a vital program and which can be rectified only by immediate on-the-spot purchase (or rental) of equipment, supplies, materials, printing, or contractual services.

PRESSING NEED: a need arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, and which can be rectified only by immediate on-the-spot purchase (or rental) of equipment, supplies, materials, printing, or contractual services.

PROCUREMENT CARDS ([01 NCAC 05B .1523](#))

1. Procurement cards (organizational charge cards) are for official use only and shall be used in accordance with this Section and with the statewide contract established and maintained by the Division of Purchase and Contract. Use of procurement cards by any agency is contingent on satisfactory compliance review, as determined by the Division of Purchase and Contract. Procurement cards may be used as a payment mechanism within e-procurement if permitted by fiscal policies of the agency.
2. Procurement cards shall not be used for international transactions.
3. The purchasing limit is \$25,000.00 per single purchase transaction including current NC sales tax, freight, and other applicable charges.

- a. In an emergency (as defined by [01 NCAC 05B .1602](#) or Governor's declaration), the agency card program administrator may request higher limits on cards in critical areas. Such increases shall be in effect no longer than the duration of the emergency. Requests for increased limits are to be made through the Division of Purchase and Contract if time permits and must be reported to Purchase and Contract in any case.
 - b. Agencies may apply to the SPO for single transactions exceeding \$25,000 on specific types of transactions, with justification required.
 - c. The SPO may adjust limits based on analysis of the procurement card program's results, on a statewide or agency basis, after taking into consideration current market trends, the economy, and recommendations received from the State Controller and the State Auditor.
4. Each participating agency shall designate a procurement card program administrator, who shall be the Chief Financial Officer (CFO).
 - a. All cards requested on behalf of the agency shall be sent to the program administrator (not to individual cardholders) by a traceable delivery method.
 - b. Cards shall show the agency name, and are for official use only.
5. The card program administrator shall determine appropriate limits by per-transaction amount (not to exceed the statewide per-transaction limits set in Paragraphs (b) or (c) of this Rule) total per billing cycle, merchant categories, and similar factors. Agencies shall submit a copy of their procurement card policies and procedures to the Division of Purchase and Contract within 90 days after program implementation and thereafter whenever such policies or procedures are updated.
6. The card program administrator shall determine compliance with agency policy and procedures, including cardholders' acknowledgement prior to issuance of cards, account reconciliation, and security.
7. Agencies shall comply with procurement card policies prepared and disseminated by oversight fiscal offices (e.g., Office of the State Controller for state departments) governing those agencies under their responsibility.
8. No other charge cards that obligate payment by the agency or the State shall be used unless an existing contract obligation requires its use, but that obligation shall be discontinued no later than June 30, 2003. Requests for exceptions to this rule shall be submitted in writing to the State Purchasing Officer. Consideration of requests will be based on need, compliance reviews and contract obligations.
9. The Purchasing Officer is the only authorized person to purchase equipment (any cost) with my card, not others. IT purchases (scanners, iPads, laptops, etc.) are limited to the Purchasing Officers card only.

SOLE SOURCE VENDORS

DEFINITION: A sole source vendor is a company or person who sells a product or service that meets the unique needs of the purchaser; generally, **sole source** means the one and only source for the product or service in the United States (minimum). *If a manufacturer has dealers or distributors anywhere in the country, it is not a true sole source; having regional, state, or area dealers or distributors do not constitute sole source.*

EXAMPLES: the following are examples of sole source vendors:

- A new computer software company sells software that they developed and that can only be purchased from them.
- A piece of equipment the college has breaks down and the required parts and repair service can only be obtained from the one local company authorized by the manufacturer to sell and service in this state/country.

DOCUMENTATION: Any knowledge of or justification for using a “sole source” vendor must be noted on the requisition for consideration by the RCC Procurement Agent. If technical specifications are the justification, note them in detail for comparison to existing products and sources. If possible, attach the following documentation to the requisition:

- Sole source letter from manufacturer
- Descriptive literature

PROFESSIONAL SERVICE AGREEMENTS & CONTRACTED SERVICES

All Professional Service Agreements (PSA's) and Contracted Service Agreements must be processed through the RCC Controller/Business Office. The PSA itself suffices as the purchase requisition. The original PSA with all information, including budget code and approval signature, is forwarded to the RCC Controller/Business Office for approval. This procedure is necessary to facilitate tax reporting for independent contractors and to encumber budget allocated for contractors as soon as we are aware of the obligation.

NOTE: All contracted service suppliers are required to provide the RCC Controller/Business Office with proof of insurance prior to beginning work.

CONTRACTED SERVICES: Generally, terms of service contracts should not exceed a one year term; however, an exception to this rule occurs where a vendor must make a significant investment in equipment to perform the service. In these cases, a contract term with an initial one-year term, with renewals up to five years may be considered.

Community College services are exempt from the Division of Purchase and Contract per [01 NCAC 05A .0102](#) SCOPE. (See V-7 in the [P&C Manual](#) to see that “rules applying to service contracts do not apply to community colleges”.) As a result, RCC is responsible to set policy for purchase of services. The following is the policy adopted by RCC:

Under [G.S. 115D-58.5\(a\)](#) community colleges are governed by State Purchase and Contract in the purchasing of supplies, equipment, and materials. There is no reference in the General Statutes as to how community colleges are to acquire services. Given this lack of statutory authority, RCC elects to acquire services patterned after those procedures for purchasing supplies. These purchases will be entered directly into the Colleague system and tracked accordingly there.

EQUIPMENT/SERVICE DEMONSTRATIONS

The RCC Purchasing Department should be notified prior to any equipment/service demonstration. This is required for the financial protection of the department and institution. The Department head must approve equipment demonstrations.

The supplier, in all cases, is held responsible for all expenses incurred prior to, during, and after the demonstration. RCC will not accept any responsibility for the safety of the supplier or the supplier's equipment.

RCC is in no way obligated to purchase or lease the equipment or service after demonstration. *The department requesting or receiving the demonstration is not authorized, either expressed or implied, to commit RCC to purchase any equipment or service demonstrated.*

Any contract for demonstration coverage, permission/release sheet, or receipt of goods slip must be reviewed and, if deemed appropriate, signed by the RCC Purchasing Department. Any purchase requisition issued as a result of demonstrations will be held in accordance with the normal purchasing procedures and regulations of the institution and the State.

EVALUATION OF EQUIPMENT

The RCC Purchasing Department should be notified prior to any installation of the supplier's equipment for the purpose of evaluation. This is required for the financial protection of the department and institution.

If a supplier offers equipment to be installed for evaluation, the following criteria applies:

1. RCC is in no way obligated to purchase or lease the equipment after evaluation.
2. The department receiving the equipment for evaluation is not authorized, either expressed or implied, to commit RCC to purchase or lease the equipment after evaluation.
3. Equipment must be adequately identified as belonging to the supplier during the evaluation period.
4. Any evaluation contract, permission/release sheet, or receipt of goods slip must be reviewed, and if deemed appropriate, signed by the RCC Purchasing Department.
5. The supplier is responsible for all costs incurred prior to, during, and after the evaluation. Equipment insurance is the responsibility of the supplier. RCC assumes no liability for the equipment.
6. At the end of the evaluation period, the evaluating department is responsible for crating and shipping the equipment back to the supplier. The supplier is responsible for furnishing all crating/packing material and return freight charges.
7. Suppliers cannot use the name of RCC or the evaluating department of RCC in any advertisements or endorsements.

DIRECT PURCHASING/PAYMENT PROCEDURES

DIRECT PURCHASING PROCEDURES

Direct Purchasing is designed for small purchases on the open market when use of the NC E-Procurement or P-Card is not authorized or practical. Specific guidelines are provided in order to ensure proper use and accurate accountability for items purchased.

Approval authority for local purchases will be the same as specified for NC E-Procurement. Departmental staff with purchasing authority shall be made aware of policy regarding the use of a requisition, including dollar limitations and competition requirements.

1. A small direct purchase is defined as a purchase equal to or less than \$29,000.00.
2. A Department may make direct purchases when the total amount is \$29,000.00 or less without seeking competition. For goods and services priced above the \$29,000.00 limit, a *fair and open solicitation of offers from more than one source* is required.
 - a. Quotes must be documented on the requisition or verified by official documents received from the vendor.
 - b. All pertinent documentation relating to the purchase, along with the bid data, packing slip, invoice, etc, shall be attached to the requisition.
3. Purchase Exceptions. Stringent policy guidelines shall be followed to ensure that only authorized purchases are made with the direct purchasing requisitions.

NOTE:

NC E-Procurement is a *Procurement* system, used to issue Purchase Orders to vendors.

For RCC tracking purposes, since the above purchases will be made prior to creating Purchase Orders, these Requisitions will be entered directly into RCC's Colleague system, creating an internal Purchase Order that will not be sent to the vendor, creating a possible duplicate order.

NOTE: *Other recurring annual expenses for instructional and operational purposes such as classroom supplies, security services, utilities, and telecommunications may require a blanket purchase order. These types of expenses should be reviewed by the respective departments at the end of each fiscal year and submitted to the Executive Vice President for approval. Depending upon the commodity, services/utilities, maintenance supplies, or instructional supplies, the Accounts Payable Department will either send the requisition to the RCC Purchasing Department to be entered into the NC E-Procurement system or the requisition will be entered directly into Colleague*

each month; allowing the department to make payments against the blanket purchase order for the entire fiscal year.

PRINTING, RENTALS, LEASES, and SERVICES

In accordance with the North Carolina Administrative Code excerpts listed below, printing, rentals, leases, and services are not under the authority of the Division of Purchase and Contract, and are the responsibility of the community college to procure in accordance with established purchasing rules, regulations, and procedures; as well as to ensure each procurement file is properly documented. In the event of vendor protest, it is the responsibility of the community college to handle the protest.

Competition should be solicited whenever possible. If competition is not solicited the reason(s) for waiver of competition shall be made part of the procurement file. Each procurement file should provide a clear "audit trail" of the reason and intent of the purchase; along with all supporting documentation (i.e. solicitation document, NC terms and conditions, addenda – if applicable, evaluation/rating, tabulation, award notification, etc.)

Listed below are Direct Purchase items that may be paid via Colleague Purchase Orders. *(This list is not all-inclusive):*

- Employee property loss and damage claims
- Pre-approved room rentals and meals
- License Tag fees
- Membership Fees
- Insurance costs
- Registration fees associated with Travel Reimbursement
- Subscription fees (Magazines, Newspapers)
- Tuition and Registration fees
- Communication Invoices (Telephone Bills)
- Utilities Invoices
- Advertising

SCOPE [\(01 NCAC 05A .0102\)](#)

Printing, rentals, leases and services not required to be processed through Division of Purchase and Contract.

CONTRACTING REQUIREMENTS [\(01 NCAC 05B .0301\)](#)

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

APPROVAL AND DOCUMENTATION [\(01 NCAC 05B .1402\)](#)

Although competition may be waived pursuant to RULE .1401 of this Section, its use is required wherever practicable. Where waive 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 by the agency, including standard language, terms and conditions issued by the Division of Purchase and Contract. 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 the Division, 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 conditions of RULE .1518 of this Subchapter, except where otherwise permitted by rule.

FILES [\(01 NCAC 05B .1903\)](#)

1. Each contract file shall be identified individually so it can be readily located and referenced.
2. All purchase transactions shall be documented. As applicable, each file should include:
 - a. Original offers if in writing, or written documentation of verbal offers received;
 - b. Reasons for award or cancellation;
 - c. Worksheets/evaluations;
 - d. Mailing lists, if used;
 - e. Written justification for waiver or emergency purchase;
 - f. Tabulation of offers received;
 - g. Copy of purchase order(s);
 - h. Related correspondence;
 - i. Reason(s) for receiving only one offer in response to a solicitation;
 - j. Negotiated contracts; and
 - k. Reasons for not accepting technical proposals.
3. After award of contract, all material in the file, except confidential information, shall be open to interested persons during normal office hours, and may be hand copied, or copies shall be furnished in accordance with the [Public Records Act](#). All requests must be made in writing. 132-6.2(c)

ADVERTISING OF BIDS

RCC must advertise bids for purchases of commodities greater than \$10,000. Advertising is accomplished via posting to the State Purchase and Contract web-site or via local advertisement methods. In addition, RCC may advertise non-required Quotes on the P&C web-site but must follow P&C rules. Advertising should be coordinated through the RCC Purchasing Department.

NOTE:

Per [NC Administrative Code](#), NC Community Colleges are not required to seek approval from the Division of Purchase and Contract on the following items:

Personal Service Agreements & Contracted Services (PSA's)
Printing Purchases
Rentals & Leases
Services (to include all Utilities)
Advertisements < \$29,000

NC E-Procurement is a Procurement system, used to issue Purchase Orders to vendors. These items are usually invoiced based upon usage; therefore, there is no need for a Purchase Order.

SPECIFICATIONS

The primary purpose of a *purchase specification* is to provide a basis for obtaining a product or service that will satisfy a particular need at an economical cost. Specifications are defined as a ***detailed and exact written statement of particulars, prescribing materials, dimensions, or workmanship for something to be built, installed or manufactured.*** Specifications should be written to ***encourage, not discourage, competition*** consistent with seeking overall economy for the purpose intended.

There are two general types of specifications: [\(01 NCAC 05B .0201\)](#)

1. A **standard specification** is originated and developed by the Contract and Standards Section of Purchase and Contract (P&C). It is comprehensive in nature and intended for repeated use.
2. The institution originates the other type of specification.

When a specification is adopted as a standard, it becomes applicable to all purchases generally. Standard specifications are available from the Contract and Standards Sections through RCC's RCC Purchasing Department.

NC P&C also has an approved Qualified Products List ([QPL](#)) that identifies products approved after an evaluation procedure. The essential characteristic of this procedure is the examination and pre-qualification of brands and models of products on the basis of samples and tests. Manufacturers are invited to submit products for evaluation and inclusion to the list. Only manufacturers with products on the QPL list can be solicited for offers of those specific products.

Where articles are to be used for educational or training purposes, by handicapped persons, or for test and evaluation or research purposes, special or overriding consideration may be given to the waiver of competition and the award of contracts.

VENDOR PROTEST PROCEDURES

- a. To insure fairness to all offerors and to promote open competition, agencies and the Division of Purchase and Contract shall actively follow-up and be consistent in responding to an offeror's protest over contract awards.
- b. This Rule applies only to contracts with an actual or estimated dollar value over one-hundred thousand dollars (\$100,000). Agencies may establish procedures to handle an offeror's concerns for contracts with less dollar value.

- c. When an offeror wants to protest a contract awarded by an agency over one-hundred thousand dollars (\$100,000) in value, the agency and the offeror shall comply with the following:
 - 1. The offeror shall submit a written request for a protest meeting to the agency's executive officer which shall be received by the agency's executive officer's office within 30 consecutive calendar days from the date of the contract award. The executive officer shall furnish a copy of this letter to the SPO within five consecutive calendar days of receipt. 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 officer determines that a meeting would serve no purpose, then the executive officer 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. A copy of the executive officer's letter shall be forwarded to the SPO.
 - 2. If the protest meeting is granted, the executive officer 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 officer shall respond to the offeror in writing with the executive officer's decision. A copy of the executive officer's letter shall be forwarded to the SPO.
 - 3. The agency shall notify the SPO in writing of any further administrative or judicial review of the contract award.
 - 4. The executive officer may appoint a designee to act on the executive officer's behalf under this Rule.
- d. When an offeror wants to protest a contract awarded by the Secretary over one-hundred thousand dollars (\$100,000) in value, the SPO and the offeror shall comply with the following:
 - 1. The offeror shall submit a written request for a protest meeting to the SPO which shall be received by the Division 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 SPO determines that a meeting would serve no purpose, then the SPO 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 SPO 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 SPO shall respond to the offeror in writing with the SPO's decision. [\(01 NCAC 05B .1519\)](#)

END-USER DISPUTES

In order to avoid end-user disputes after receipt of goods or services, the RCC Purchasing Department will work closely with the end-user to be sure that product descriptions, specifications, etc. will meet the needs of the end-user. The RCC Purchasing Department may, at its discretion, elect to have the end-user review quotes or bids received to provide input prior to the actual award of the contract.

In the event that the end-user does have a dispute, the end-user will notify the supplier and the RCC Purchasing Department of the problem. The end-user will make every effort to resolve the issue directly with the supplier. In the event that no resolution is reached, the end-user will request the RCC Purchasing Department to become involved. This request must include the purchase order number, the supplier name, contact name, a description of the problem and an outline of what has taken place to date. Purchasing will then take the lead in reaching a resolution that is in the best interest of RCC.

CONSTRUCTION VERSUS STANDARD PURCHASE DETERMINATION

RCC shall review the items being included in a construction/renovation project and remove any items that they consider are non-related to the actual construction/renovation of the building. Items that are considered commodities, or just furnishings, to complete the project for use, shall be handled in accordance with the normal purchasing rules. Items that are usually removed from construction/renovation projects include carpet, office panel systems, food service equipment, and furniture. If the college 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, their justification shall be documented in writing for public record.

EQUIPMENT

Equipment is defined as any stand-alone item, which represents an investment of money, which can be financially capitalized. The item retains its original shape and appearance with use and does not lose its identity through the incorporation into a different or more complex unit or substance.

Purchases of equipment or maintenance contracts requiring new funding should be requested through the Annual Planning process.

The State categorizes a piece of equipment as being one single item totaling over \$5,000 per item, all in-cost, which includes purchased price, and shipping charges.

EXCEPTION: Computers will be listed as Minor Equipment High Risk, unless the purchase price exceeds \$5,000.

All major equipment, computers, and donated items (with an estimated cost of at least \$5,000 in its present donated condition) are recorded, tagged, tracked and inventoried. These items have a state identification tag beginning with an 866- prefix.

Each month, RCC reports all additions, changes, deletions, location transfers, etc., of equipment inventory to the Controller.

DONATED EQUIPMENT/PROPERTY

In accordance with the Richmond Community College Board of Trustees/Richmond Community College Foundation *Joint Gifts and Grants Policy*, all gifts of property and equipment will be accepted by the RCC Foundation for transfer to the College. The RCC Foundation will provide appropriate receipts and recognition to the donor as well as

maintaining records of all such gifts. Approval of the President of the College, Executive Vice President, or Associate Vice President for Development must be obtained prior to a staff or faculty member or other agent of the College accepting, or committing to accept, donated equipment or property. For guidance on the types and disposition of gifts of tangible property as well as authorities to accept donations, see the RCC/RCC Foundation *Joint Gifts and Grants Policy* or contact the Development Office. Receipt and acceptance of all property from the Foundation by the College will be coordinated with the RCC Purchasing Department through the Executive Vice President. The estimated value of donated equipment/property will determine if equipment/property will be tagged and added to the official College inventory records.

All donated equipment/property must be reported to the RCC Purchasing Department.

DISPOSALS

Surplus equipment must be disposed of in accordance with State procedures. Surplus equipment is any extra equipment or equipment needing disposal. It is illegal to cannibalize excess equipment without prior approval of RCC's Executive Vice President or designee. The RCC Purchasing Department should be contacted for instructions for disposal of all surplus equipment or cannibalization of equipment.

Service requests should be submitted to the RCC Purchasing Department for requests to dispose, remove, or store all surplus equipment. The RCC Purchasing Department will coordinate the movement and disposition of equipment in accordance with approved procedures and State regulations.

Notify the RCC Purchasing Department before disposing or cannibalizing of any surplus equipment.

MOVEMENT OF EQUIPMENT

The RCC Purchasing Department must be notified whenever equipment is moved or transferred. This can be accomplished by email so long as you list the equipment asset number (beginning with 866 prefix), and the building and room number the equipment is moved.

Notify the RCC Purchasing Department prior to moving any equipment to another room, building, or campus.

PHYSICAL INVENTORY

A 100% physical inventory of capitalized equipment items must be conducted each fiscal year. Every item on record has to be located and identified. This complete physical inventory usually takes place between January - July. Each year, state auditors schedule

time to audit our inventory. A random sample of inventory items is chosen, and each item must be physically located.

It is the responsibility of every employee to maintain control of college equipment. Department heads are responsible for assuring all assigned equipment can be accounted for by physical location or properly approved relocation or disposal.

Any equipment that cannot be located through physical inventory will be reported to the attention of the department head/manager. Priority must be given to locating the piece(s) of equipment. All missing equipment will be reported to the Executive Vice President and to the President for additional review and search. A final listing of any missing equipment is reported to the NC Community College System Office each August.

EQUIPMENT REPAIRS

UNDER WARRANTY REPAIRS OF EQUIPMENT

New equipment is usually under warranty by the manufacturer for a limited period of time against faulty parts or workmanship.

A request for repair/service for items "under warranty" should be referred to the supplier by the using department. Along with your repair/service request, furnish the serial number of item and the nature of the problem. *Inquire about the costs, if any, to be paid by RCC.*

The manufacturer is legally responsible for replacement or repair if the defective equipment is returned to an authorized repair center. Depending on the warranty, some repairs are performed at no charge; some require the cost of labor. Regardless of whether work is performed at no charge or with labor charges, the RCC Purchasing Department must be notified prior to repairs being made. The RCC Purchasing Department will issue a FAST verbal purchase order number, to authorize, document, and verify the repair. Whether no charge is involved or labor charges only, this PO number will be used for tracking purposes. *Any freight or service charges not paid by the supplier will be billed back to the department after the transaction is completed.*

NOTE: Before sending any equipment off campus for repair, notify the RCC Purchasing Department, for approval. The RCC Purchasing Department will log out the equipment on a repair log sheet. This procedure applies to both major (>\$5000) and minor (between \$5,000 and \$1,000) equipment. No equipment should leave a RCC campus without approval from the RCC Purchasing Department.

The following information must be submitted to the RCC Purchasing Department:

- ◆ State tag number (866-XXXXXX)
- ◆ Serial number
- ◆ Brief item description
- ◆ Equipment location
- ◆ Repair facility and reason for repair

Notify the RCC Purchasing Department when the repaired equipment item is returned to RCC.

OUT-OF-WARRANTY REPAIRS OF EQUIPMENT

A request for repair for items “out-of-warranty” should be referred to the supplier by the using department. Along with your repair request, furnish the serial number of item and the nature of the problem. ***Inquire about the repair costs and return freight to be paid by RCC.*** Based on the repair cost you may determine it is more advantageous to buy a new one versus repair. The RCC Purchasing Department **must** be notified, prior to returning equipment for repair.

After the RCC Purchasing Department has issued the PO and notified the using department, the equipment to be repaired should be returned to the supplier/manufacturer by the department in accordance with the supplier's shipping instructions. Out-of-warranty repairs are billed back to the using department after the transaction is completed. Budget will be transferred to the department for properly approved repairs.

The supplier/manufacturer repairing the out-of-warranty equipment should return the equipment directly back to the using department. Be sure to provide the supplier with your complete address including, building name, room number, and contact person. A Maintenance Contract is recommended for critical equipment.

NOTE: Before sending any equipment off campus for repair, notify the RCC Purchasing Department, for approval. The RCC Purchasing Department will log out the equipment on a repair log sheet. No equipment should leave a RCC campus without approval from the RCC Purchasing Department.

The following information must be submitted to the RCC Purchasing Department:

- ◆ State tag number (866-XXXXXX)
- ◆ Serial number
- ◆ Brief item description
- ◆ Equipment location
- ◆ Repair facility and reason for repair

Notify the RCC Purchasing Department when the repaired equipment item is returned to RCC.

LIBRARY BOOKS

The Condor Learning Resource Center is owned by Richmond Community College. All library book orders must follow the same approval authority by submitting a requisition with all required signatures and quotes, as per NC E-Procurement. Departmental staff with purchasing authority shall be made aware of policy regarding the use of a requisition, including dollar limitations and competition requirements.

The exception with library books will be as follows:

- In certain circumstances, with the RCC Purchasing Department's approval, library staff may place an order for books prior to submitting the requisition. For these vendors, a second quote is not necessary.

- For some vendors, a P-Card purchase may be preferable. The RCC Purchasing Department will make the final decision to grant this purchase.

NOTE: All library book orders must follow the same approval authority by submitting a requisition with all required signatures and quotes, as per NC E-Procurement.

APPENDIX

REQUIRED REPORTING

- Historically Underutilized Business Report – Quarterly - Due Oct 31, Jan 31, Apr 1, and Jul 31. <http://www.ips.state.nc.us/ips/Vendor/srchven.asp>
- Purchasing Flexibility Report – Annually – Due January 31st.
- Conflict of Interest Form – Annually (required by RCC)

RESOURCES

- NC Administrative Code: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2001%20-%20Administration\Chapter%2005%20-%20Purchase%20and%20Contract%20>
- NC Community College System: <http://www.nccommunitycolleges.edu/>
- NC Community College System Purchasing and Equipment Manual: http://www.nccommunitycolleges.edu/Facility_Services/administrative_services.htm
- NC E-Procurement Vendor Registration: <http://eprocurement.nc.gov/Vendor.html>
- NC Purchase and Contract: <http://www.doa.state.nc.us/PandC/>
- NC P&C Agency Purchasing Manual: <http://www.doa.state.nc.us/PandC/agpurman.htm>
- NC P&C – State Contract Search: <http://www.pandc.nc.gov/StateWideContracts.htm>
- NC P&C - Locate HUB Vendors: <http://www.ips.state.nc.us/ips/Vendor/srchven.asp>
- NC P&C – Specification Examples: <http://www.doa.state.nc.us/PandC/splist.htm>
- NC P&C IT Procurement: <http://www.its.state.nc.us/ITProcurement/>
- NC State Surplus: <http://www.surpluspropertydivision.com/>
- Executive Order 50 - <http://www.governor.state.nc.us/NewsItems/ExecutiveOrderDetail.aspx?newsItemID=929>

END-USER RESPONSIBILITIES

(Maintenance and Service Contracts)

1. End User will identify all Service and Maintenance Contracts used by his/her Department. Typically, a blanket PO is prepared annually for services supported by a contract.
2. Notify the RCC Purchasing Department of all Service and Maintenance arrangements. Purchasing should have copies of all contracts.
3. End User will contact Vendor to obtain Vendor Contract (signed and dated by the vendor). Any contract supplied by the vendor must contain the following statement "The attached North Carolina General Contract Terms & Conditions are considered part of this agreement and supersede vendor terms and conditions". A copy of these Terms & Conditions is located in the Appendix.

4. End User reviews the Vendor Contract for accuracy. For example – Is RCC still using the services provided in the contract? Is the equipment listed under the maintenance agreement still used by RCC? Does the Vendor's current year invoice bill us the amount stated (agreed upon) in the Vendor Contract?
5. End User will forward a copy of the Contract and Requisition to Purchasing for processing. The Contract will be held in the Service and Maintenance Contract File. Retain a copy of the Vendor Contract for your files. Purchasing will not process Requisitions unless a Contract is on file in the Purchasing Office.
6. Purchasing signs Vendor Contract on behalf of RCC and forwards signed copy to Vendor along with official Purchase Order.
7. Requisitions for Service/Maintenance Contracts, including software support, should be coded to account # 535400 in the Department benefiting from the service. Budget to cover the expenditure will need to be identified and transferred to cover the cost.
8. Purchasing verifies that a Vendor Contract is on file before processing the Requisition. The Contract Inventory excel file is helpful for this verification process.
9. Periodically, Purchasing will distribute the Service and Maintenance Contract Inventory List to End Users. End Users may find the list useful for the following:
 - Annual Purchase Order preparation process.
 - To identify expiring contracts and possibly seek another vendor for service, if applicable.
 - Identify aged contracts that need to be updated
 - Avoid unnecessary repair costs for assets covered under maintenance contracts.
10. Purchasing and Finance will use the Inventory List to perform the following:
 - Identify opportunity for cost savings (volume discounts) where multiple departments may be using the same vendor.
 - Calculate prepaid expenses.
 - Comply with accounting standards, which requires a copy of the Contract to be on file to support expenditures.
11. End User should notify Purchasing in writing if dissatisfied with service for any reason. Many of these contracts require up to a 90 day advance written termination notice.

SPECIFICATION GUIDANCE

(To be prepared by End-User)

1. What are you buying? This should include: An accurate description of the item, item numbers, model numbers, quantity needed, and list of additional components needed to complete the system.
2. Is this a sole source? Why? If yes, obtain letter stating such from the vendor.
3. Are there specifications? These specifications should not be photocopies from literature but typed specifications that you can use.
4. If it is brand specific, why? What brand?
5. Is installation needed? If yes, must be included in bid or order.
6. Is training needed? Major training or general instruction to user?
7. Do you have any special delivery needs? Deadline for delivery? Inside delivery?
8. What kind of warranty is provided or required?
9. Do you need a maintenance contract for this kind of item?
10. Would used, refurbished or demo equipment be acceptable?
11. What kind of service do you need for the equipment?
12. Is there a suggested vendor? Who? Provide contact information.
13. For purchases greater than \$10,000 (\$25,000 IT items), review the "Standard Paragraphs" on the P&C Website <http://www.doa.state.nc.us/PandC/divforms.htm> to see if any should be added to your specifications, or view <http://www.doa.state.nc.us/PandC/splist.htm> for example specifications.

HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)

A Historically Underutilized Business is a business which is majority owned or managed by one or more minority persons, women, or disabled persons. RCC's objective is to increase the college's expenditures for the purchase of goods and services from HUB vendors while maintaining the integrity of sound financial practices and complying with state purchasing and contracting laws and policies. Please consider HUB vendors in all of your purchases. You may locate HUB vendors at the Purchase and Contract's website: <http://www.ips.state.nc.us/ips/Vendor/srchven.asp>.

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS (Contractual and Consultant Services)

NOTE: For “Agency”, substitute “Department”, “University”, etc., as applicable.

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
2. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined
3. **INDEPENDENT CONTRACTOR:** The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.
4. **KEY PERSONNEL:** The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Agency's Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified in the Contractor's proposal.
5. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Agency's Contract Administrator. Acceptance of an offeror's proposal shall include any subcontractor(s) specified therein.
6. **PERFORMANCE AND DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, the Agency shall thereupon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined.

In case of default by the Contractor, the State may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State reserves the right to require a performance bond or other acceptable alternative performance guarantees from successful offeror without expense to the State.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State. Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

7. **TERMINATION:** The Agency may terminate this agreement at any time by 30 days notice in writing from the Agency to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Agency, become

its property. If the contract is terminated by the Agency as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.

8. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice(s) or acceptance of services, whichever is later, or in accordance with any special payment schedule identified in this RFP. The using agency is responsible for all payments to the Contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the Contractor for payment if the Contractor accepts that card (Visa, MasterCard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
9. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Agency for the purpose set forth in this agreement.
10. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency.
11. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of a contract and will reimburse the College for loss of damage of such property.
12. **COPYRIGHT:** No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
13. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. The Contractor shall retain all records for a period of three years following completion of the contract.
14. **ASSIGNMENT:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:
 - a) Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or
 - b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s). In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.
15. **COMPLIANCE WITH LAWS:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
16. **AFFIRMATIVE ACTION:** The Contractor shall take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
17. **INSURANCE:** During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:
 - a) Worker's Compensation - The Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is subcontracted, the Contractor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.
 - b) Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability).

- c) **Automobile - Automobile Liability Insurance**, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

18. **ADVERTISING:** The offeror shall not use the award of a contract as part of any news release or commercial advertising.

19. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This Request for Proposals, any addenda thereto, and the offeror's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

20. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the Agency and the Contractor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.

21. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document, the vendor certifies that it and all of its affiliates (if it has affiliates); collect(s) the appropriate taxes.

22. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.

23. **GENERAL INDEMNITY:** The Contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the Contractor provided that the Contractor is notified in writing within 30 days that the State has knowledge of such claims. The Contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

24. **OUTSOURCING:** Any vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the Contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the State agency responsible for the contract.

Vendor must give notice to the using agency of any relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the United States.

By submitting and signing these North Carolina General Contract Terms and Conditions, the Contractor certifies the following:

- ◆ Terms and Conditions are signed by an authorized representative of the company.
- ◆ Contractor has read and understands the conditions set forth in the Terms and Conditions and agrees to them with no exceptions.
- ◆ Contracts are subject to the Terms and Conditions outlined herein. All responses shall be controlled by such Terms and Conditions and the submission of OTHER Terms and Conditions and/or other documents will be waived and have no effect. Contractor specifically agrees by signature to the North Carolina General Terms and Conditions.

SIGNATURE: _____

PRINTED SIGNATURE: _____

TITLE: _____

DATE: _____

