



North Carolina Department of Administration

Pat McCrory, Governor
Bill Daughtridge, Jr., Secretary

Division of Purchase & Contract
Patti Bowers, Director

Memorandum

To: Fiscal Officers, all State departments, agencies and institutions
Purchasing Officers, all State departments, agencies and institutions

From: Patti Bowers, State Purchasing Officer *Patti Bowers*

Re: Procedures for Legal Review of Proposed Contracts greater than \$1 Million

Date: 22 September 2014

During its 2013 and 2014 sessions, the North Carolina General Assembly modified the process of obtaining legal review of all proposed contracts for goods and services and has established certain reporting and other requirements on some high-value procurements. These changes are contained in Session laws 2013-234 and 2014-115. The purpose of these laws are to provide greater consistency and legal support in the procurement process.

First, the responsibility for reviewing proposed contracts greater than \$1 million has shifted from the Attorney General or his designee to the recently created Contract Management Section within the Division of Purchase and Contract. Also, the legislation imposes additional reporting requirements on all State entities regarding certain purchases—regardless of whether the purchase itself is exempt from Article 3 of Chapter 143 (the State purchasing statutes). Last, non-competitive service procurements valued at more than \$5 million require active involvement by the Attorney General or his designee in the contract solicitation, drafting and negotiation process.

The specific details of these requirements, and procedures for accomplishing them, are described in the Attachment to this memo, which also includes a reporting form. Each State department, agency and institution is responsible for reviewing and understanding these requirements.

Questions may be directed to Sam Byassee, head of the Contract Management Section, at sam.byassee@doa.nc.gov, phone: 919-807-4533; or to me at patti.bowers@doa.nc.gov, phone 919-807-4550.

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Responsibilities for Legal Review of High Value Procurements

Responsibilities of P&C Contract Management Section

1. Review all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed \$1 million to ensure they:
 - a. Are in proper legal form
 - b. Contain all clauses required by law
 - c. Are legally enforceable
 - d. Require performance that will accomplish the intended purposes of the proposed contract
2. Participate and provide assistance in the preparation of all proposed solicitations greater than \$1 million, and review all available proposals from prospective contractors, with the goal of obtaining the most favorable contract for the State.
3. Interpret proposed contract terms and advise the procurement personnel about potential liabilities to the State.
4. Cooperate with the Attorney General in the review of proposed non-competitive contracts for services that exceed \$5,000,000.00.
5. Assist State departments, agencies, and institutions to establish formal contract administration procedures and functions and advise personnel in contracting specialist roles regarding appropriate contract management and administrative techniques and activities.
6. Act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and other matters as directed by the State Purchasing Officer.

Responsibilities of all State Departments, Agencies and Community Colleges

1. Each department, agency and community college (including all Boards and Commissions) is **responsible for submitting** to the Contract Management Section at the Division of Purchase and Contract all proposed contracts for supplies, materials, printing, equipment and contractual services with a value greater than \$1,000,000 (including the value of all potential options and renewals) for appropriate legal review, as required by 143-50.1. This review must be completed before P&C will approve a recommended award. (Exception: The General Counsel for the Department of State Treasurer is responsible for reviewing investment contracts.)
2. Each department, agency and institution in the State is **responsible for notifying** the Contract Management Section of its intent to enter into a contract for supplies, materials, printing, equipment and contractual services with a value greater than \$1,000,000, regardless of whether

the particular contract is required to be submitted to Purchase and Contract for approval. Under 114-8.3(c), the requirement applies even if the department, agency or institution is exempt from P&C oversight of some or all of its purchasing activities or is exempt from Article 3 of Chapter 143 entirely.

3. Each department, agency and community college is **responsible for notifying** the Contract Management Section of all proposed contracts for services that are not the result of a competitive bidding process and are expected to exceed \$5,000,000. The contract management section will report each such proposed contract to the Attorney General, who will designate legal counsel to review the proposed contract and assist in the negotiation of a final agreement.

Responsibilities of UNC and its Constituent Institutions

1. The University of North Carolina and its constituent Institutions are responsible for notifying the Contract Management Section of its intent to enter into a contract for supplies, materials, printing, equipment and contractual services with a value greater than \$1,000,000.
2. The General Counsel of each institution is responsible for reviewing all proposed contracts for supplies, materials, printing, equipment and contractual services with a value greater than \$1,000,000.

Notification to the Contract Management Section must be on a copy of the attached form, which may be scanned and e-mailed to P&C.contracts@doa.nc.gov, or faxed to the attention of the Contract Management Section at (919) 807-4511.

High Value Procurement Review: Quick Reference Sheet

Contract Management Section must

- Review all proposed contracts for supplies, materials, printing, equipment, or contractual services that exceed \$1 million and are subject to Article 3 of Chapter 143
- Participate and provide assistance to agencies in the preparation of all proposed solicitations greater than \$1 million
- Act as a general resource to State agencies on contracting issues related to procurement

All State Departments, Agencies (Boards and Commissions) and Community Colleges must

- Notify the Contract Management Section of **all** proposed contracts for supplies, materials, printing, equipment, or contractual services that exceed \$1 million
- Submit all proposed contracts for supplies, materials, printing, equipment, or contractual services that exceed \$1 million to the Contract Management Section for legal review (for all contracts subject to Article 3 of Chapter 143)
- Notify the SPO of all proposed non-competitive contracts for services that exceed \$5,000,000.00

UNC and its Constituent Institutions must

- Notify the Contract Management Section of all proposed contracts for supplies, materials, printing, equipment, or contractual services that exceed \$1 million
- Obtain legal review from the institution's General Counsel for all proposed contracts greater than \$1 million

Notify the Contract Management Section as required using the provided form, and e-mail to P&C.contracts@doa.nc.gov, or send by fax to the Contract Management Section, Division of Purchase and Contract, at (919) 807-4511.

Notification should occur immediately upon recognizing that more likely than not the purchase will exceed a total of \$1 million in total value (including all options, renewals and extensions).