

FAYETTEVILLE STATE UNIVERSITY

PURCHASING

- Authority:** Issued by the Chancellor. Changes or exceptions to administrative policies issued by the Chancellor may only be made by the Chancellor.
- Category:** Business, Finance and Administrative Services
- Applies to:** ●Administrators ●Faculty ●Staff ●Students
- History:** Revised: May 1, 2013
Revised: July 13, 2012
Revised: February 29, 2008
- Related Policies:** ●*UNC and the Division of Purchase & Contract Memorandum of Understanding*
●*State of North Carolina Purchasing Manual*
- Contact Person:** Director of Purchasing (910) 672-1086
-

TABLE OF CONTENTS

INTRODUCTION2

AUTHORIZATION AND ORGANIZATION2

PURCHASE OF CONTROLLED ITEMS2

FUNDING SOURCES3

PURCHASING PRACTICES5

OBTAINING PROPOSALS AND QUOTATIONS8

PURCHASE NEW VERSUS USED, DEMONSTRATOR EQUIPMENT,
AND PURCHASING TRIAL EQUIPMENT10

PROTEST OF AWARD PROCEDURES AND VENDOR DISPUTES11

PRICING DEVIATIONS14

DEALINGS WITH VENDORS14

REPAIR OF EQUIPMENT17

EQUIPMENT TRADE-IN18

CONTRACTUAL SERVICES AND INDEPENDENT CONTRACTOR
SERVICES18

I. INTRODUCTION

This policy and its procedures must be followed in carrying out the purchasing process at Fayetteville State University (university). The primary goal of all purchasing activities at the University is to procure a high-quality product or service, at the best price, in the shortest period of time. As a ‘custodian of public monies,’ the University’s Purchasing Department is committed to integrity and professionalism.

II. AUTHORIZATION AND ORGANIZATION

The Purchasing Department is the sole entity at the University having the authority to place purchase orders and authorize the use of small purchase procedures to acquire commodities (i.e., supplies, materials, and equipment) and contractual services (to include printing and professional and consultant services) by purchase, rent, lease, lease-purchase or installment purchase.

The purchasing processes of the university are guided by the principles of fairness, impartiality, and propriety. The actual absence of, or even the appearance of the absence of, these principals may constitute a conflict of interest where the university, or individual, is adjudged as practicing favoritism or preferential treatment toward a particular vendor or contractor. Because of the detrimental impact that these conditions may have, the university is committed to fair and open competitive placement of its requirements and the avoidance of any conflict of interest.

In this regard, it is the policy of the university that employees must avoid conflicts of interest that may compromise professional objectivity. This mandate is particularly true in the execution of the university’s purchasing practices, regardless of the individual doing so, as they retain a high level of public visibility due to the custodial nature of these responsibilities.

Purchases are subject to the terms and conditions of State law and the University of North Carolina Board of Governors policies, and, in the instance of federally funded grants and contracts, federal law. All purchases will be reviewed for compliance.

III. PURCHASE OF CONTROLLED ITEMS

A. Purchase of Controlled Substances

The possession and use of controlled substances (drugs having no accepted medical use or drugs having potential for abuse) are governed by the Federal Controlled Substances Act of 1970. This law requires every person who manufactures, distributes, prescribes, administers, or dispenses any controlled substance or who proposes to engage in any activity utilizing controlled substances to register annually with the U.S. Department of Justice, Bureau of Narcotics and Dangerous Drugs.

Purchase of controlled substances cannot be made by or for the university without such proper registration.

B. Purchase of Industrial Alcohol

The Department of Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF) regulates the tax-free purchase of industrial alcohol and specifically denatured spirits. Such purchases may only be made for these items upon receipt of the ATF’s approval as documented by the ATF issuance of an “Industrial Alcohol User Permit” (ATF Form

5150.9). Upon issuance of the ATF permit number, the university may withdraw and use alcohol tax free on a continuing basis and will remain in force until suspended, revoked, or terminated.

Associated with the issuance of this permit are the requirements to:

1. Maintain records and file periodic reports as required by federal regulations.
2. Pay the Special Occupational Tax (a tax on the use of alcohol and not itself) on an annual basis.
3. Post the permit in the authorized and approved place of storage.

IV. FUNDING SOURCES

A. Applicability of State Purchasing Practices

The State of North Carolina Purchasing Department, has established that all public funds irrespective of source used for purchases, rental, lease, and lease-purchase of commodities (i.e., equipment, materials, supplies) and services will be controlled by the provisions of North Carolina law, and the State of North Carolina's Purchasing Manual as implemented by the university's Purchasing Policies and Procedures.

B. Department Funds

The university administratively operates on the principle of decentralized fiscal responsibility (or budget allocations to the college, schools, and departments) and internal management control. The administrative head of each unit, accordingly, is responsible for the expenditure of this allocation.

Funds are available for purchase upon allocation and allotment to the affected account. The Executive Budget Act prohibits the obligation of State funds prior to these actions and the expenditure of monies for any purpose for which it was not appropriated.

The authority to make purchases from department budgets is provided to the Purchasing Department by signatures of the administrative head, or account holder, on a purchase requisition or the authorized submittal of an electronic (i.e., online) requisition. In some cases, this authority to approve charges against a department budget is delegated by the administrative head to others. Such a delegation, however, does not relieve the primary party from the responsibility for the allotted budget and its use.

C. Grants and Contracts

Research funds, whether grants or contracts, are considered to be awarded to the university and not the individual principal investigator or a particular department. Generally, these funds are expended under the auspices of a department or school with authorizations provided as discussed at Department Funds section above.

In addition to being guided by State statutes and the Office of Management and Budget (OMB) Circular A-110, the Federal Acquisition Regulation, Part 35, Federal Acquisition Circulars, and Federal Executive Order 12549 also apply.

OMB Circular A-110 provides standards for obtaining consistency and uniformity in administering the obligation of federal funds extended to institutions of higher education by an award of the federal government. Particular sections of the Circular Procurement Standards, which require specific purchasing practices by all individuals involved in the purchasing process, are:

1. Section 43 – The university must provide, to the maximum extent, open and free competition in its purchases.
2. Section 44 – The university’s purchasing practices and procedures must provide that:
 - a. The requisitioning and purchase of unnecessary items is avoided.
 - b. A lease-versus-purchase analysis is performed, where appropriate.
 - c. Small-business, minority-owned firms, and women’s business enterprises are used.
 - d. Awards are made in the type of instrument that best serves to promote the funded program, i.e., firm fixed-price purchases.
3. Section 45 – The purchasing files must evidence the accomplishment of a cost or pricing analysis prior to each award.
4. Section 47 – Contract administration is accomplished to enable an assessment of the vendor or contractor’s performance and its conformance with the purchase’s terms and conditions, specifications, and delivery.

While the Circular does address the disposition of equipment, equipment purchased with grant or contract funds additionally is subject to all university and State regulations governing equipment use, management, and disposal. All equipment transferred to the university from other institutions or agencies, if allowed by grant or contract terms, is subject to all university and State regulations governing equipment use, management, and disposal.

Federal contracts are subject to the Federal Acquisition Regulation, Part 35 and the Federal Acquisition Circulars. Departments purchasing items from federal contracts will be required to submit certification of compliance with their purchase requisition.

Federal Executive Order (E.O.) 12549 “Debarment and Suspension” requires that all contractors receiving individual awards, using federal funds for \$25,000 or more, and all sub recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. The purchasing office will review vendor status at least once per year. No purchase order will be generated until the debarment status has been reviewed and approved.

Debarment and suspension information will be included in bid documents funded with federal dollars. If the vendor does not provide debarment certification, or if the web site

is checked and the vendor IS on the list (debarred), the purchasing office will place a hold on the award process until the vendor is returned good standing.

V. PURCHASING PRACTICES

A. Support of State Mandated Sources of Supply

It is the university's policy to adhere to the State's requirement to use mandatory and preferred sources of supply and services.

B. State Term Contracts

North Carolina law provides that it is unlawful to purchase any requirements from sources other than those certified by the State and prescribed by the State Term Contracts.

The State enters into Term Contracts typically as annual contracts with vendors to acquire favorable prices for many commonly used items across the state. As such, the cost of an item under Term Contract may not be used as justification for purchasing an item from a non-contract source if significant savings are available.

The first approach to any purchase should be to determine its availability on Term Contract. Questions regarding what is available under Term Contract or information concerning vendors under contract should be directed to the Purchasing Department.

Term Contracts offer a vast array of products and services. These items may be viewed at the State Division of Purchase and Contract's website.

C. Correction Enterprises

North Carolina law requires North Carolina Correction Enterprises products to be provided first consideration unless such products do not satisfy the requirement. By statute, Correction Enterprises is required to keep the price of such items substantially in accord with that paid by governmental agencies' for similar items as a result of competitive solicitations. Products available from the private sector, including Term Contracts, may be purchased only when it is determined that the Correction Enterprises product will not satisfy the university's requirements or will not be available when needed.

Correction Enterprises offers a vast array of products and services. These items may be viewed at the Correction Enterprises Web home page.

Historically Underutilized Business Program (HUB)

In support of and in compliance with the Governor's Executive Order No. 77, it is the policy of the university that, to the extent permissible, purchases will be placed with Historically Underutilized Business (HUB). HUB-eligible purchases will provide the access and opportunity to participate competitively in the university's purchasing program without barrier.

HUB vendors are currently defined to include those businesses that are owned by minorities, women, and persons with disabilities as well as business enterprises and non-profit workshops for the blind and severely disabled.

Through the use of HUB vendors, the competitive base of the university's purchasing will be broadened. Benefits will result for both the university and the vendor.

The Purchasing Department will serve as the administrator and coordinator of the HUB Program for Fayetteville State University.

D. Purchasing Recycled Products (Buy-Recycled)

In support of and in compliance with the Governor's Executive Order No. 8 and North Carolina law, it is the policy of the university to promote and, to the extent maximum feasible, purchase and use products with recycled content. By law, the university is required to acquire fifty percent (50%) of its paper and paper products purchases with recycled content. Accordingly, Buy-Recycled purchases will occur where it is found economically practicable and cost effective to do so.

"Recycled content" products are those which incorporate waste materials and by-products that have been recovered or diverted from the solid waste stream, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. The purchase of recycled content products fosters the growth of the availability of this type product and the closure of the cost variance between recycled content and 'virgin' products.

The following actions will continuously be taken to further foster the Buy-Recycled Program and meet program objectives:

1. All campus departments are to purchase and use products manufactured from or containing recycled materials whenever feasible. In particular, recycled content paper and paper products should be used.
2. Requirements' specifications will be continuously reviewed and revised, as appropriate; to eliminate any discrimination against materials and supplies with recycled content, except where health, safety, and welfare would be placed in jeopardy.
3. Solicitation documents will be written to encourage vendors and contractors to offer products having recycled content and to propose prices for such products. Pricing obtained by the campus will similarly conform. Recycled product proposals will be considered in the evaluation for award when the product is comparable in quality, availability, and price.
4. When available, consideration will be given to products that are reusable, refillable, repairable, more durable and less toxic and use minimal packaging. State Term Contracts will be used, as well, when the products are listed.
5. Public documents published for the university printed on recycled paper will contain a printed statement or symbol indicating that the document was printed on recycled paper.

6. Announcements and correspondence will be made to emphasize the significance of the Buy-Recycled Program, where and when appropriate.

E. Energy Efficient Compliance

As part of Fayetteville State University's ongoing pursuit of energy conservation, energy reduction, cost containment, and environmental protection, all purchases, to the extent possible, shall be ENERGY STAR certified. All appliances purchased by the University, to include those purchased indirectly through construction or renovation contracts, shall be ENERGY STAR certified in all areas for which such ratings exist.

To assure the integrity of the university's computing network and to be able to provide instruction, consultation, and maintenance in a cost-effective and efficient manner, the university's ITTS Department has established standards for computer and related technology. In addition to covering ENERGY STAR-certified computer hardware, these standards specify operating systems, network protocol, and other operational software that are accepted for general use throughout the university.

F. Safety of Purchased Products

By the purchase of specific goods, materials, and equipment, departments create liabilities for the use of such items and their introduction into the work place, which the university must assume. These items include, but are not limited to, equipment and furniture where safety standards may apply, hazardous materials such as chemicals and biological agents, construction materials and products used to alter or modify facilities, portable heating, and cooling equipment acquired by departments other than Facilities Management and Residence Life.

To ensure proper compliance of these purchases, university departments are required to observe any guidelines prescribed by the university in the identification, purchase, and use and disposal of goods, material, and equipment.

G. Justification Memorandum

The justification memorandum is not a specific form but is a memorandum or letter that is prepared by a department to explain a particular purchasing requirement, the use of a specific purchasing method, or the requirements to support a certain action. The specific instances requiring the use of a justification memorandum are described throughout these policies and procedures.

A justification memorandum may be in any format and of any length and should be addressed to the Director of Purchasing. The purchase requisition referred to in the justification memo should be attached or clearly referenced on the hard copy sent to Purchasing.

Each justification memorandum or letter is prepared for a unique situation; therefore, the information necessary in each instance is different and must be tailored to meet the circumstance's needs.

H. Penalties for Non-Compliance

Compliance with University and State Purchasing guidelines is crucial to the operations of the university. Employees who do not follow appropriate purchasing guidelines will be subject to the penalties listed below. In addition, at the Vice Chancellor's discretion, the individual may be required to pay for the item purchased.

-First Offense –The employee will be notified in writing (with a copy to the employee's supervisor) that she/he will be required to attend purchasing training. The employee may also be required to pay for the item purchased.

-Second Offense – The individual will be required to pay for the item purchased and the individual's purchasing authority may be suspended for a certain time period.

-Third Offense – The individual will be required to pay for the item purchased and the individual's purchasing authority will be terminated.

I. Immediate Need Purchases

Integral to all purchasing procedures is the element of planning. It is recognized, however, that instances do occur when planning is not possible due to the circumstances surrounding the requirement. Such situations are defined as when there is a "pressing need" or "emergency". In these specific instances, occasional exceptions may be made to this policy with the prior approval of the Purchasing Department.

VI. OBTAINING PROPOSALS AND QUOTATIONS

By action of The University of North Carolina Board of Governors, the university's purchasing authority is limited to a \$50,000 'benchmark', or as otherwise stated, the university is required to solicit and place its requirements through State Division of Purchase and Contract for all commodities when the total requirement exceeds \$50,000. The solicitation of proposals, bids, and quotations for requirements valued at \$50,000 or less is generally within the authority and the responsibility of the university.

Contractual services exceeding \$50,000 may be solicited by the Purchasing Department, but awards are subject to the approval of the State Division of Purchase and Contract.

Public law establishes that it is not permissible to divide requirements to assure a requirement does not exceed \$50,000 limit or any other imposed limit and thus avoid placement through the State or, as required, any other threshold prescribed herein. Additionally, all purchases issued by the university become void when the total dollar value exceeds \$50,000 unless an exception exists by special delegation, exemption, State certificate of award, State guidance, or State Term Contract.

A. Confidentiality

The confidentiality of university cost estimate for a requirement, offeror or bidder proprietary product data, competitive position of offerors and bidders, pricing information, technical evaluation information, and other information that may potentially enhance the advantage of one offeror or bidder over another must be maintained

throughout the entire purchasing process until an award is made. This is key to maintaining the integrity of the university's purchasing processes and procedures. Improper release of any of this information compromises the ability of the university to procure commodities or services in a competitive and equitable market as well as impair future purchases.

B. Forms for Obtaining Pricing

The university secures competitive pricing through proposals, bids, and quotations. Regardless of the solicitation practice used, the university's estimated cost (requisition) is to be safeguarded at all time and is for internal use only.

1. Requests for Proposal (RFP) - solicitation documents where the evaluation of competing offerors for an award may be performed considering factors other than/in addition to cost, e.g. performance and value of cost. These factors often entail some form of submittals or demonstration and may provide for measurable evaluation. Limited requests for clarification and discussions may be available under the RFP. Respondents to this form of solicitation are termed offerors who present an offer or proposal to the university.
2. "Two-Step" Requests for Proposal (RFP) - proposals where both technical evaluation criteria and award evaluation criteria are specified. Only offerors successfully completing the technical evaluation are considered under the award evaluation; award criteria may include factors other than cost (e.g., value for cost.) Responses to both the technical and award evaluation criteria are considered 'confidential' until award. Departments participating in the evaluation processes are not permitted to release or discuss any information disclosed during the evaluation, particularly with any offeror. Respondents to this form of solicitation are termed "offerors" who present an 'offer' or 'proposal' to the university.
3. Invitations for Bid (IFB) - solicitation documents in which the evaluation of competing bidders for an award is primarily based on cost, although other factors may be considered if specified in the IFB. Responses to IFBs are submitted as "sealed bids" and bids are considered confidential until award. No discussions, disclosure of price costing information, or relative positions of bidders are permitted under an IFB. Awards are premised solely on what was solicited and responded. Respondents to this form of solicitation are termed "bidders" who present a "bid" to the university.
4. Requests for Quotation (RFQ) - solicitation documents used to secure competitive pricing when the requirement is not complex. An award resulting from a RFQ is based on cost. Respondents to this form of solicitation are termed "offerors" who present a "quote" or "quotation" to the university. RFQs may also be issued to solicit pricing from sole/single source providers.
5. Request for Information (RFI) - solicitation documents in which the intent is to obtain product/service and pricing information for "planning purposes" only. A RFI provides no commitment on behalf of the university to make a purchase as a result of this form of solicitation. Rather, prospective respondents are advised that the university is only seeking information generally to assist in making a

management and/or budgetary decision. Potential respondents are also informed that the university is not responsible for any costs, which may be incurred in preparing a response or the response itself. The RFI should be used judiciously as it can affect future responses to university RFPs and IFBs.

VII. PURCHASING OF NEW VERSUS USED AND DEMONSTRATOR EQUIPMENT AND PURCHASING OF TRIAL EQUIPMENT

A. New Versus Used Equipment

General purchasing practices prescribe the acquisition of “new materials,” North Carolina state policy, however, provides that “used” equipment, materials, or supplies may be purchased when such purchase is in the public interest and the competitive process is used. When a campus department has a special need for a particular item which may avail itself of this allowance, the advantages of doing so are to be fully documented in the campus department’s requirement submittal and the proposed purchase discussed with the Purchasing Department.

The Purchasing Department’s solicitation of the requirement will allow for the offer of both “new” and “used” items to assure an equitable evaluation baseline. This evaluation will assess whether the value of a “used” purchase is reasonable, given the expected usefulness of the item remaining, any warranty or guarantee extended with the “used” item, and the incremental cost to step up to a “new” item and its associated benefits.

Additionally, policy provides that all used equipment purchased must carry a “new” warranty, except those items purchased from State and Federal Surplus Property.

Definitions that are relevant in these decisions and should be used selectively to clearly identify the type of requirement are as follows:

1. “New”: Never used and with a “new” full warranty period.
2. “Used”: Normally purchased “as is, where is” with no warranty or guarantee.
3. “Newly Manufactured” or “Factory-Produced New”: Previously manufactured and used as another model after which the item is brought into the remanufacturing facility and made into a “new” model meeting “new” standards and tolerances with a “new” warranty. This description is often identified as “like new”.
4. “Factory Remanufactured”: Previously used and returned to a remanufacturing facility and, using new and use parts, is brought up to standards and may extend a “new” warranty.
5. “Reconditioned” or “Refurbished”: Cleaned and repaired to a state of usefulness by the manufacturer or a dealer with little, if any, warranty.
6. “Demonstrator”: Equipment which previously was “new,” “remanufactured,” or “reconditioned” and used in some form external to the campus by a vendor to demonstrate operations, functions, and capabilities to other potential customers. Note: Often companies will offer “Demonstrator” equipment at special prices

under “New” warranty conditions. Offers of this type are usually worthy but cannot be accepted without providing for such an allowance in the competitive solicitation of the requirement.

B. Purchase of Trial Equipment

When a campus department has the specific need to subject a particular piece of equipment to a trial period prior to making the decision to purchase such, or “fly before you buy,” the campus department will coordinate such a need with the Purchasing Department prior to any arrangements being made with the vendor. Concurrence by the Purchasing Department in a trial period does not waive any statutory or regulative requirements otherwise imposed on the university - specifically, the requirements for competition and full justification of non-competitive purchases. Failure of the campus department to secure the Purchasing Department’s concurrence in the trial may cause a personal liability to fall upon that individual(s) initiating the trial.

The campus department shall secure a purchase order for any trial equipment. The purchase order will provide for the trial and disclaim any assumption of liability on behalf of the university to purchase the equipment upon conclusion of the trial period (as prescribed in the purchase order) or assume responsibility for the security of the equipment in the case of loss or damage. The purchase order will encumber \$1.00 of the campus department’s money but will not process for payment as so noted on the purchase order. Any purchase of the trial equipment will be executed by issuing a change order against the purchase order.

VIII. PROTEST OF AWARD PROCEDURES AND VENDOR DISPUTES

In the preparation of requirements and specifications and the solicitation of such, all efforts should be made to avoid creating any conditions which may contribute to the protest of an award. Should, however, a protest occur, it is the university’s policy to resolve protests effectively at the lowest administrative level possible and to maintain integrity and confidence in the university’s purchasing processes.

The North Carolina State Agency Purchasing Manual provides general guidance for protest procedures. Additionally, North Carolina law prescribes that any protests or dispute should be settled through informal procedures in preference to formal administrative procedures, which incur additional costs and time.

The protest of award procedures of the university adheres to these principles.

“Protest,” as used in this policy, means a written objection by an interested party to a solicitation for offers as to matters that may affect a proposed award. “Dispute,” as used in this policy, is a written objection to issues, which may administratively arise during the performance of a purchase order. “Protestor” means an actual or prospective offeror/bidder whose direct economic interest would be adversely affected by an award or by the failure of an award to be made. To be considered a valid “protest,” the objection must be submitted in writing to the university as specified herein and to no other party and must adhere to the guidelines of the university’s protest procedures.

A. **Conditions for Protest**

Protests of award generally result from the existence of specifications or terms and conditions in a solicitation assessed by a prospective vendor or contractor to be preferential or unobtainable. Protests may also result from the challenge of an award to a specific vendor or contractor that is assessed by another prospective vendor or contractor as not having the capacity and/or capability to perform the award as specified.

Protests may be filed for cause or for conditions which are apparent in the solicitation no later than 15 consecutive calendar days from the date of the protested award. When a protest is filed prior to an award, the protest shall not be considered, the award shall be made, and the interested party shall be so informed in writing.

To be considered fully, protests must clearly contain and address the following elements:

1. Name, address, and telephone number of protestor.
2. Solicitation number or purchase order number and date affected by the protest.
3. A detailed statement of the factual grounds for the protest accompanied by copies of all relevant documents. This statement must contain specific sound reasons, and any supporting documentation for why the party is protesting an award must be attached.
4. A concise statement as to the form of relief requested by the protestor.

B. **Protest Resolution Procedures**

The Purchasing Director is appointed as the university's designee for protest resolution.

A protest of award must be filed by a protestor within 15 consecutive calendar days from the date of the protested award to the Purchasing Department. Filings not made within this period will not be considered. A copy of filings meeting this time requirement will be furnished to the Purchasing Director within 5 consecutive calendar days of receipt.

Following the receipt of a protest, the protest will be immediately provided to the Purchasing Director, who will direct the research of the protest and prepare findings and conclusions.

1. If the letter of protest does not contain the information required of a protesting party, the Purchasing Director may refuse the protest and so inform the protestor in writing within 5 consecutive calendar days of the receipt of the protest. Such a decision will be coordinated with the university Legal Counsel. A copy of such will be provided to the Legal Counsel and the State Purchasing Officer upon its release.
2. If the protest shows merit, the Purchasing Director may convene a fact-finding meeting with the protestor to determine fully the nature of the protest and to make an initial attempt to resolve the disputed conditions. Prior to such a meeting, the Purchasing Director may seek the Legal Counsel's opinion as well as factual statements from the requiring department. It will be the preference of

the Purchasing Director to bring the protest to a conclusion (by mutual agreement) at the time of its meeting with the protestor without inhibiting the proposed award or nullifying the actual award.

Should this fact-finding meeting not resolve the protest, the Purchasing Director will confer further with the Legal Counsel as required and determine whether to conduct a protest meeting with the protestor or to issue a written decision to the protestor. The latter may be elected where the protest does not contain the information required of a protestor or if the Purchasing Director determines that a meeting would serve no purpose. Such a decision will be coordinated with the Legal Counsel and a copy of such provided to the Legal Counsel and the Purchasing Department/Director upon its release.

When a protest meeting request is granted, scheduling of the meeting will be attempted within 15 consecutive calendar days of receipt of the protest. The Purchasing Director's written decision will be issued within 5 consecutive calendar days from the date of the protest meeting. Such a decision will be coordinated with the Legal Counsel and a copy provided to the Legal Counsel and the Purchasing Director upon its release.

If the Purchasing Director's written decision is appealed (within the university purview), a response will be tendered from the Office of the Associate Vice Chancellor for Business and Finance but only upon the receipt of the protestor's formal written appeal. Such an appeal must be submitted to the Associate Vice Chancellor's Office to be accepted. The Associate Vice Chancellor may elect an additional meeting with the protestor prior to the university issuing any further final written decision.

In the case of an appeal, the Associate Vice Chancellor shall render the final decision to the protestor. This action may be preceded by a briefing of the Vice Chancellor for Business and Finance. Such correspondence will clearly evidence that it is the "final decision" and fully prescribe the final resolution.

C. **Vendor/Contractor Dispute**

Disputes may arise during the performance of a purchase order. Such a grievance typically results from decisions made while administering a purchase order, is initiated by the vendor or contractor performing the order, and represents the lack of agreement by the vendor or contractor in a decision rendered by the university.

To be considered formally, the dispute must be submitted in writing as a claim and demonstrate a demand or assertion seeking, as a matter of right, the payment of monies, the adjustment or specific interpretation of the purchase order terms and conditions, or some other form of relief.

"Claims" will be addressed as prescribed at Protest Resolution. The principles of protest handling will be applied in claims resolution. Claims regarding the text of a purchase order or its performance will be addressed using the following order of precedence (a) the proposal form (excluding the specifications); (b) the representations; (c) clauses, provisions, and terms and conditions; (d) other documents and attachments; (e) the specifications; and (f) the drawings.

IX. PRICING DEVIATIONS

Campus departments are to be attentive to any changes in purchase order prices as reflected on a vendor's invoice. The university will issue payment for the price recorded on the purchase order unless the following circumstances exist:

- A. Where there is a pricing deviation under invoiced unit price which will increase the amount paid no greater than 10 percent.
- B. The purchase order is not a "Quote Order" or a State Term Contract order. (Pricing under these types of orders must show no deviation.)
- C. When the pricing deviation affects a "Quote Order" or a State Term Contract order or exceeds the allowable variance for the particular type of purchase order, the campus department must concur in the deviation. The Purchasing Department will initiate the necessary actions by contacting the vendor for an explanation of the deviation. If the vendor's justification is reasonable, the Purchasing Department will contact the campus department to discuss the change in price. In lieu of accepting the price deviation, the campus department may decide to return the merchandise to the vendor. The process of returning the merchandise will be accomplished through the Purchasing Department. The campus department may decide to retain the merchandise and assume the additional cost. In such a case, the campus department will initiate a "Request for Change Order" form.

The Request for Change Order will be prepared by the campus department and submitted to the Purchasing Department. The Purchasing Department will act on the Request for Change Order as authorization to proceed with the change and distribute copies of the change order as necessary. Note: These same procedures apply when there is a quantity deviation.

If the vendor's justification is not accepted, the vendor will be requested to forward a corrected invoice showing prices as indicated on the purchase order.

- D. When a vendor notifies the Purchasing Department of a pricing deviation (especially an increase) prior to delivery or performance, the Purchasing Department will first contact the campus department to determine the department's desire to complete the order at the additional cost. If the campus department agrees to incur the additional cost, a Request for Change Order will be prepared and forwarded by the campus department to the Purchasing Department for issuance of a Change Order as prescribed above.
- E. When the pricing deviation is caused by the incurrence of a freight charge, the university will pay the invoiced freight charge if it appears reasonable and is not a "Quote Order" or State Term Contract Order. Where multiple shipments exist, multiple freight charges may be incurred.

X. DEALINGS WITH VENDORS

A. Contact with Vendors during Solicitation and Proposal/Bid Review

Campus departments are reminded and cautioned that, during the period of evaluation and prior to award, possession of the proposals/bids and accompanying information is

limited to personnel of the State Division of Purchase and Contract, the university Purchasing Department, and those who are specifically responsible for review and evaluation of the proposals/bids. There must be no vendor participation in the review and evaluation, and no information may be furnished to vendors regarding the status of the evaluations. All vendor contact, particularly for proposal/bid clarification, shall be made by the Purchasing Department.

B. Correspondence with Vendors

Following the transmittal of a purchase order to a vendor, all correspondence in connection with the fulfillment of the order or contract will be handled by the Purchasing Department. Campus departments should notify the Purchasing staff of any matters they feel necessitate correspondence.

If delays or problems with delivery are encountered, campus departments are to contact the Purchasing Department. The Purchasing staff will then contact the vendor and notify the campus department of the resolution.

C. Complaints to Vendors

Complaints about products received (such as shortages, damages, late shipments) should be routed through the Purchasing Department. When a vendor repeatedly provides poor service and/or merchandise does not meet written specifications to the extent that work is hampered, campus departments are to forward specific complaints to the Purchasing Department. The complaint must be submitted in a written memorandum or letter and clearly explain the conditions, which generated the complaint. The Purchasing Department will complete the "Complaint to Vendor" form and transmit such to the State Purchase and Contract Division or take appropriate action directly with the vendor. Campus departments are urged to make written complaints when justified. If a vendor receives an excessive number of complaints, the State Purchase and Contract Division or the Purchasing Department may refrain from considering the vendor as a "source of supply" for any new requirements or when compiling source lists.

D. Sales Calls by Vendors

Sales calls are to be limited to keeping the campus department informed of new items being introduced and to providing information on various aspects of their product(s).

Receipt of equipment for demonstration and evaluation purposes is permissible provided no obligation is made to the vendor to purchase the equipment.

E. Product and Service Demonstration by Vendors

1. When Requested by Vendor

Occasionally, vendors may request that they be allowed to demonstrate a new product line or a new service. The university does not prohibit this type of demonstration; however, arrangements for space for such demonstrations must be made with the appropriate department head and through the Purchasing Department. The vendor will be responsible for all expenses incurred in the demonstration. The university will not accept any responsibility for the safety of

vendor equipment nor obligate itself to any purchase from the vendor as a result of the demonstration.

2. When Requested by the Campus Department

A more common type of demonstration is that requested by a campus department from a vendor of a particular piece of equipment. In these instances, the arrangements are to be made between the campus department and the vendor. Prior to making arrangements for such a demonstration, the campus department should coordinate with Purchasing Department and the university Fixed Assets Section to determine if a similar product is available from a contract source and, otherwise, used on campus or required by another campus department. All expenses incurred from these demonstrations are the responsibility of the vendor. The university will not accept any responsibility for the safety of any vendor equipment nor obligate itself to any purchase from the vendor as a result of the demonstration.

3. Purchase after the Demonstration

The demonstration of equipment to a campus department or to an individual in no way obligates the university to purchase or lease the equipment or service. Any purchase requests issued after demonstrations will be processed in accordance with the normal purchasing regulations of the university and State.

4. Evaluation of Equipment for Vendors

From time to time, vendors may request that a campus department evaluate equipment without obligation to purchase. When a vendor offers equipment for evaluation and the campus department is willing to have the equipment installed for evaluation purposes, the campus department should request that the Purchasing Department secure a written agreement with the vendor using the following basic guidelines:

- a. The equipment must be adequately identified and described, giving model and serial numbers.
- b. All shipping charges and associated liability are to be paid and assumed by the vendor.
- c. Insurance, if any, is the responsibility of the vendor. The university assumes no liability for the equipment. The university may agree to exercise normal operational care and to avoid abuse of the equipment.
- d. At the end of the evaluation period, the vendor will be responsible for crating, removal, and shipping of the equipment.
- e. The evaluation of equipment for a vendor does not grant the vendor permission to use the name of the university in any advertisement or as an endorsement.

XI. REPAIR OF EQUIPMENT

A. Repair of In-Warranty Equipment

Most new equipment is warranted by the manufacturer for a period of time against faulty parts or workmanship. Such equipment is generally supplied with a warranty card which is to be completed and returned by the campus department to the manufacturer as soon as the equipment is received. Unless this warranty card is returned promptly, some manufacturers will not accept liability for the repair or replacement of the equipment. In the case of equipment obtained by solicitation, the warranty specifications will be spelled out on the solicitation, the offeror's/bidder's response, and the purchase order.

The campus department owning the equipment may originate a request for in-warranty service or, if the campus department chooses, the Purchasing Department will contact the vendor for service of equipment. When submitting the service request, the campus department should furnish the number and date of the original purchase order and the nature of the defect.

The Purchasing Department will communicate with the vendor for instructions on handling the warranty repair. If return to the vendor is necessary, the campus department will be responsible for forwarding the equipment to the vendor. The campus department is not to return the equipment until shipping instructions are obtained from the vendor.

The vendor repairing the equipment will return the repaired equipment directly to the campus department. Accordingly, the campus department is to provide the vendor with its complete address, including the name of the person in charge of the equipment, room number, and the name of the building. Any freight or service charges not paid by the vendor will be billed to the campus department by the vendor after the transaction is completed.

B. Repair of Out-of-Warranty Equipment

Repair of out-of-warranty equipment is paid for by the campus department on a per-call basis. Requests for out-of-warranty service not covered by a service or maintenance contract should be initiated by the submittal of a purchase requisition to the Purchasing Department once thorough estimates of repair costs are obtained.

In instances when a firm fixed-price estimate is not available, the Purchasing Department may issue a "Not to Exceed (NTE)" purchase order for the repair. Such a purchase order authorizes repair to proceed under a specified dollar limit; this limit may not exceed this amount unless amended by a purchase order change order issued by the Purchasing Department. Additionally, when conditions warrant, the purchase order may provide for a tear-down-quote where the campus department is not obligated to proceed with a repair if the initial tear-down and inspection demonstrates that the costs of repair will exceed the value of the equipment or the campus department elects not to proceed.

The equipment to be returned for repairs should be returned to the company by the campus department in accordance with the repair facilities shipping instructions.

XII. EQUIPMENT TRADE-IN

Some used equipment has value when used as a trade on the purchase of new equipment of the same type. When a campus department wishes to trade in used equipment, a request must be made of the Purchasing Department and included in the purchase requisition for the affected new equipment.

The existing equipment to be affected by the trade in request is to be identified by year of acquisition and production (if known); original or initial acquisition cost(s); model number; serial number; description; and university fixed asset number (if equipment is recorded in fixed assets). If the equipment to be traded in has been capitalized in the Fixed Assets System, then the campus department will forward the Fixed Asset Disposal Form to the Purchasing Department. The Purchasing Department will sign the form confirming a trade in occurred and forward the form to the university's Fixed Assets Section.

If the university deems this trade in desirable, the Purchasing Department will request approval from the State Surplus Property Division. Prior to request for approval, the Purchasing Department must have a written quotation of the trade-in allowance offered by the vendor. Only if approved by the State may the university offer the existing equipment as a trade in of the purchase.

XIII. CONSULTING AND INDEPENDENT CONTRACTOR SERVICES

A. Types of Services

The following services may be provided by an independent contractor:

1. Personal Services

Personal Services are provided by a professional individual (PERSON) on a temporary or occasional basis. A personal service may also be a consultant service, in which case consultant contracting procedures shall be followed.

2. Professional Services

Professional services may be provided by an individual or company. Such services require specialized knowledge, experience, expertise or similar capabilities. The service cannot primarily be for review, analysis or advice in formulating or implementing improvements in programs or services, in which case rules relating to consultant contracts shall be applicable.

3. Consultant Services

Consultant services are defined as work or task(s) performed by governmental entities or independent contractors possessing specialized knowledge, experience, expertise, and professional qualifications to investigate assigned problems or projects and to provide counsel, review, analysis or advice in formulating or implementing improvements in programs or services. This

includes but is not limited to the organization, planning, directing, control, evaluation, and operation of a program, agency, or department

Contracts for consulting services shall be consistent with all applicable university policies and procedures related to the procurement of services, including policies and procedures for personal and professional services, competitive bidding, and sole-source justifications.

a. Authorization to Approve

The Chancellor or the Chancellor's designee, is authorized to approve contracts for consulting services when the services are determined to be in the best interest of the University, and the amount is not above the university's management flexibility purchasing benchmark.

The University of North Carolina Vice President for Finance is authorized to approve contracts for consulting services above the university's management flexibility purchasing benchmark.

b. Reporting Requirements

Contracts for consulting services must be report to the Board of Trustees and the University of North Carolina Vice President for Finance at least annually.

c. Exempt Contracts

Contracts for the use of consultants for instructional services, curriculum development, and conducting academically oriented research are exempt from the above requirements, but such contracts must comply with all applicable policies and procedures adopted by the university.

B. Review and Approval of Contracts

1. Unit Review

The individual initiating the contract for the University is responsible for reviewing the contract in its entirety and determining the following:

- If the service or advice cannot be performed within the resources of the University;
- If the contract language accurately reflects the current state of negotiations;
- If the contract meets programmatic and University mission requirements;
- If the estimated cost is reasonable as compared with the likely benefits or results;
- If the contract is in the best interest of the University, and
- If the contract is sufficiently clear and consistent.

The individual initiating the contract for the University is responsible for ensuring compliance with the obligations it places on the University, If the contract involves indirectly or directly other unit(s) in the performance of the contract (i.e., financial considerations, telecommunications considerations, space considerations, etc.), the other unit(s) must be consulted and agree to perform as stated in the contract.

2. Vice Chancellor’s Review

The individual initiating the contract is responsible for obtaining approval of the contract by the Vice Chancellor responsible for the respective division. Such approval is to be endorsed in writing on the first page of the contract. Also, the Vice Chancellor should indicate on the first page of the agreement the budget code from which the contract will be paid.

3. Legal Office Review

After obtaining the Vice Chancellor’s approval, the individual initiating the contract must submit the contract to the Office of Legal Affairs for legal review. All University contracts, prior to the execution, shall be approved as to legal form and validity by the General Counsel or the General Counsel’s designee. Such approval is to be endorsed in writing on the contract. Such approval and endorsement shall not be required with respect to individual contracts, extensions, or renewals if the form has prior approval by the Office of Legal Affairs as a standard and contains no substantive changes or additions other than those pertaining solely to the description of the project, the amount involved, and the term of the contract or extension.

4. Division of Business and Finance Review

After review by the Legal Office, the contract will be forwarded to the Division of Business and Finance for review by the Purchasing Office. If the contract is approved, it will be signed by the Vice Chancellor for Business and Finance and forwarded to the department which initiated the contract review process.

C. Contract and Payment Processing

After the individual who initiated the contract within the campus department receives the signed contract, the following steps must be done for timely payments to be made.

1. Complete an online requisition including the contractor’s name, contract duration, and payment amounts.
2. Write the requisition number on the contract.
3. Forward signed contract with requisition number to the Purchasing Department.
4. Forward monthly invoice to Accounts Payable.

The Purchasing Department shall produce a purchase order and distribute the signed contract and pink copy of the purchase order to Accounts Payable.

Once Accounts Payable receives the approved monthly invoice from the campus department, it will match the invoice with the contract and related purchase order and process the payment.