

State Procurement & Contracting:  
An Overview  
Crista M. Cuccaro, UNC School of Government  
2024 Public Law for Public Lawyers

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Overall Course Content

- Introduction (5 minutes)
- Division of Purchase & Contract (15 minutes)
- State Construction Office (10 minutes)
- Department of Information Technology (10 minutes)
- Ethics in Procurement (5 minutes)
- Procurement under the Uniform Guidance (5 minutes)

*Look for this symbol to indicate an online resource!*



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Overall Learning Objectives

- Understand procurement principles and the lifecycle of procurement
- Distinguish the authority of P&C, the SCO, and DIT
- Navigate the entry points for procurement
- Mention the ethics of procurement and the legal prohibitions on public officials' conduct

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**WHAT** is Procurement?



- Obtaining goods or services
- Often through a structured and competitive process
- Office supplies, vehicles, machinery
- Consulting services
- IT equipment and services
- Construction, repair, and maintenance services
- Architectural or engineering services

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**WHY**  
Procurement  
Matters?



- Competition
  - Risk Management
  - Value
  - Fairness
  - Transparency
- "The right product or service at the right time and at the right price."

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**HOW?**  
Sources of Law



- North Carolina General Statutes
- North Carolina Administrative Code
- Agency Policies and Procedures
- The Uniform Guidance
- United States and North Carolina Constitution
- Common Law (i.e., Court Decisions or Case Law)

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**WHERE?**  
Where to Start



- Purchase & Contract (P&C)
- State Construction Office (SCO)
- Department of Information Technology (DIT)

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### WHEN? Procurement Lifecycle



- When and where does procurement start?
- What are the steps along the way?
- When is a procurement finished?
- What is the most challenging part of procurement?

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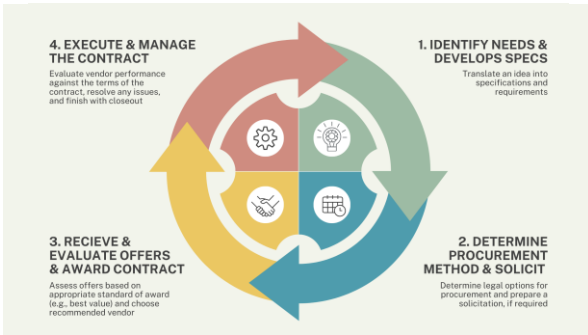
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### Essential Question: What is being procured?



- Non-IT goods and services
- Including consulting services and personal services
- But **not** professional services (A/E) or construction or repair services

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### P&C Sources of Law

- North Carolina General Statutes
  - Chapter 143, State Departments, Institutions, and Commissions
    - [Article 3, Purchase and Contract](#)
    - [Article 3C, Consulting Services](#)
    - [Article 8, Public Contracts](#)
  - Chapter 25, Uniform Commercial Code
    - [Article 1, General Provisions](#)
    - [Article 2, Sales](#)
- North Carolina Administrative Code
  - [01 NCAC 05](#)
- Purchase & Contract Policies and Procedures
  - [North Carolina P&C Procurement Manual](#)
  - Agency Procurement Manuals

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### Authority of Purchase & Contract (P&C)

[G.S. 143-49](#)

#### **17 enumerated duties and powers of Secretary of Administration**

- Purchase all goods and services required by State government
- Establish and maintain a procurement card (p-card) program
- Monitor and enforce the terms and conditions of statewide term contracts

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### Essential Question: Does a purchasing preference apply?



- Correction Enterprises, G.S. 148-134
- Nonprofit Workcenters for the Blind & Severely Disabled, G.S. 143-48.2
- State Term Contracts, G.S. 143-49 and 01 NCAC 05B .1101

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### Essential Question: What is the cost?



- Determines delegation
- Determines procurement method

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### Methods of Procurement

- **Small Purchases** = \$29,000 or less
- **Informal Procurement** = above \$29,000 up to General Delegation or Bid Value Benchmark
- **Formal Procurement** = above General Delegation or Bid Value Benchmark

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### Delegations to Agencies & Institutions

G.S. 143-52  
01 NCAC 05B .0301

- Based on cumulative contract amount including potential extensions and renewals
- Your agency delegation amount, also known as a benchmark or threshold, determines whether you must obtain P&C approval of your solicitation

Entity	Delegation
State Agency	\$50,000-\$100,000
Community College	\$50,000
University	\$500,000

Look up your agency delegation [here](#)




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### Bid Award

- Most Advantageous
- Lowest Cost vs. Best Value
- Responsive? Responsible?
- Use of References




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### NC Resident Vendors

G.S. 143-59  
E.O. No. 50

- Applies to purchases of goods, except certain aggregates, asphalt, and concrete
- Gives the North Carolina vendors opportunity to select the option to match the price of the lowest responsible nonresident bidder, if the North Carolina resident bidder's price is within 5% or \$10,000, whichever is less, of the nonresident bidder's price
- The North Carolina resident bidder will first be offered the contract and will have two business days to accept or decline the award based on the lowest responsible bidder's price

DOA FAQs on E.O. No. 50




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### Notes on P&C Contracts: Term and Review

- As a default, contracts can be for a term of **up to 3 years** , and a term longer than 3 years requires P&C approval (01 NCAC 05B .0319)
- The Contract Management Section (CMS) of P&C shall participate in solicitation and contracts review for **all contracts over \$1 million** (G.S. 143-50.1(b))
- The CMS shall notify the Attorney General about **non-competed contracts over \$5 million**; the Attorney General will appoint someone within its Office, or CMS, or otherwise to handle negotiation for the award of the contract (G.S. 143-49(3a))

High Value Procurement—Quick Reference Sheet



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### P&C Contract Terms and Conditions

#### 28 clauses in the General Terms & Conditions

- Includes provisions for federal funds
- Some provisions are negotiable, while others are not
- All solicitations valued more than the small purchase of \$29,000 shall contain the North Carolina General Terms and Conditions
- Modification to General Terms & Conditions requires either (1) approval from agency counsel, if value is within agency delegation, or (2) from CMS if above agency delegation

P&C General Terms & Conditions can be found [here](#).



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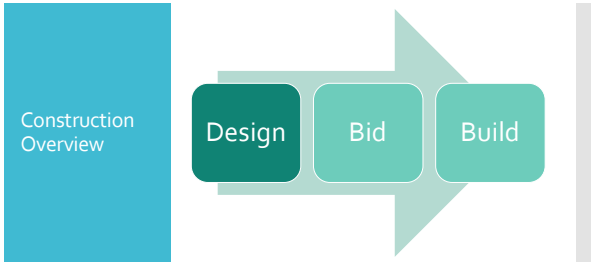
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**Essential Question:**  
**What is being procured?**



- Professional services (A/E)
- Construction or repair (renovation) services
- For "State buildings"

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**SCO Sources of Law**

- North Carolina General Statutes
  - Chapter 143, State Departments, Institutions, and Commissions
    - Article 8, Public Contracts
    - Article 8B, State Building Commission
- North Carolina Administrative Code
  - [01 NCAC 30](#)
- SCO Policies and Procedures
  - State Construction Manual

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Authority of State Construction Office (SCO)

G.S. 143-341(2)  
01 NCAC 30A.0101

17 enumerated duties and powers of Secretary of Administration

- Supervise the letting of all contracts for the design, construction or renovation of all **State buildings** and all community college buildings

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What is a State Building?

G.S. 143-336

"State buildings" mean all State buildings, utilities, and other property developments

**But not...**

- The State Legislative Building
- Railroads
- Construction of highway structures, bridge structures, and their approaches
- Any buildings, utilities, or property owned or leased by the North Carolina Global TransPark Authority
- Article does not apply to the judicial or to the legislative branches of the State




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Authority of State Building Commission

G.S. 143-135.26  
01 NCAC 30D.0101

- To **adopt rules** for qualifications-based selection (QBS) of designers, consultants, and construction managers at risk (CMAR)
- To be responsible for the **final selection** of designers, consultants, or construction managers at risk (CMAR) for the State

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### Role of State Agencies: Form OC-25

G.S. 143-341(3)b1  
01 NCAC 30A.0205

- Owners shall establish needs, scope, schedule and budgets for new physical facilities and repair and renovation with an estimated total project budget greater than \$100,000
- Requests for legislative funding start by describing the proposed capital project on Form OC-25, Cost Estimate
- **Community Colleges are exempt from OC-25 process**
- **Universities must follow additional approval processes established through each institution**

Form OC-25 is available online [here](#)



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### Essential Questions: What is being procured? What is the cost?



- Determines role of the State Building Commission
- Determines procurement method
- Determines standard of award (i.e., qualifications or cost)

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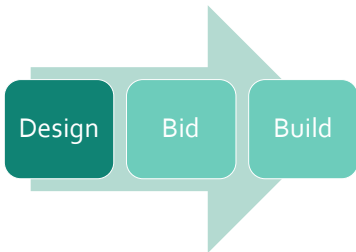
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### Construction Overview



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### SCO Classification of Construction Bidding

G.S. 143-129

- o Informal Procurement = \$500,000 or less
- o Formal Procurement = More than \$500,000

The total construction contracting value is used to determine if a project is informal or formal

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### 3 Bid Documents for Formal Construction

01 NCAC 30A .0307

- Bid Security (**OC-12**)
- Proposal Form (**OC-7**)
- HUB / MBE form(s) (**Affidavits**)

- **DO NOT require any other materials with the bid**
- **Standard of award is Lowest, Responsive, Responsible Bidder (LRRB)**

SCO Bidding forms available [here](#)



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### SCO Contract Terms and Conditions



- General Conditions of the Contract (GCC), **Form OC-15**
- Design-Build GCC, **Form OC-15DB**
- Construction Manager At Risk GCC, **Form OC-15CM**

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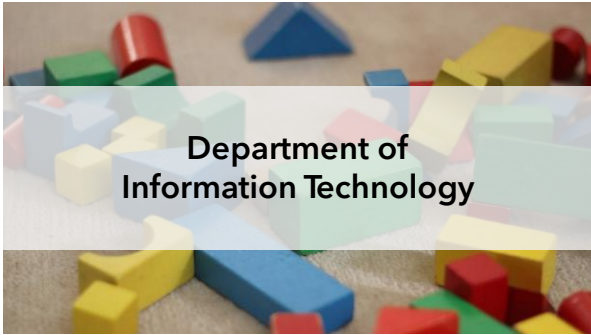
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**Department of  
Information Technology**

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**Essential Question:  
What is being procured?**

- IT procurement
- That may be an "IT project"



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**4 Criteria for IT Procurement**

-  Requires signing agreements, such as licenses
-  North Carolina State data is being stored in certain ways
-  Online database subscription
-  Involves credit card processing

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DIT Sources of Law

- North Carolina General Statutes
  - Chapter 143B, Executive Organization
  - [Article 15, Department of Information Technology](#)
  - Part 4, Technology Procurement
- North Carolina Administrative Code
  - [09 NCAC 06](#) (Subchapters A and B)
- DIT Policies and Procedures
  - [Statewide IT Procurement Office Procurement Policies and Procedures Manual](#)

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Authority of State Chief Information Officer

[G.S. 143B-1350](#)

- (a) The **State CIO** is responsible for **establishing policies and procedures** for information technology procurement for State agencies.
- (a) **DIT shall procure all information technology goods and services** for participating agencies and shall approve information technology procurements for separate agencies.
- (a) The **State CIO** may cancel or suspend any agency information technology procurement that occurs without State CIO approval.
- (b) **DIT shall review all procurements** to ensure they meet current technology standards, are not duplicative, meet business objectives, are cost-effective, and are adequately funded.

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Exemptions from Chapter 143B

[G.S. 143B-1320\(b\)](#)

- The General Assembly
- The Judicial Department
- The University of North Carolina and its constituent institutions

*These entities may elect to participate in the information technology programs, services, or contracts offered by the Department, including information technology procurement, in accordance with the statutes, policies, and rules of the Department.*

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### IT Procurement Exceptions

G.S. 143B-1320(c)-(d)

- o Procurement exception using [Form A](#)
  - o Limited or no competition available, [09 NCAC 06B .0901](#)
  - o Contract longer than 3 years, [09 NCAC 06B .0301\(d\)\(5\)](#)
  - o Cooperative purchasing, [09 NCAC 06B .1006](#)

Form A is available online [here](#)



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### Essential Question: Is there an established State IT contract ?



- Statewide IT Term Contracts
- IT Volume Purchasing (State Term Contract 204A)
- Enterprise License Agreements

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It Starts with An Idea!



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**Essential Question:  
Is it an IT Project?**



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**Determining  
an IT Project:  
The What**

An IT Project is defined as:

- Temporary endeavor
- Has a start and end date
- Results in an IT product, system, application or service being implemented or delivered

*There is no dollar minimum for cost to determine if a business need is an IT Project, which means that this question must be answered for all IT Procurements regardless of cost.*

NCDIT PowerPoint on Determining an IT Project [here](#)



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**Determining  
an IT Project:  
The How**

Two options to determine if the IT business concept or need is deemed an IT Project:

- **Project Management Advisors (PMA)**
- **IT Procurement Intake Form**



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## No, not an IT Project.



- If no, agency must:
  - Complete Privacy Threshold Analysis
  - Complete IT Procurement Intake Form (Step 01)
  - Create Purchase Request (PR) in NCEP Buyer and attach Intake Form

**NCDIT IT Procurement Process (enabled in NC eProcurement Sourcing Tool)**



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## Yes, an IT Project.



- If yes, agency must follow IT Management Process
  - Lite or Enterprise
  - Still must determine that an IT procurement is needed
  - May still need to complete IT Procurement Intake Form (Step 01)

**NCDIT IT Procurement Process (enabled in NC eProcurement Sourcing Tool)**



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## Ethics and Conflicts of Interest

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### Legal Standards for Public Employees under State Law

- G.S. 14-234: Public officers or employees benefiting from public contracts; exceptions
- G.S. 133-32: Gifts and favors regulated
- G.S. 14-234.1: Misuse of confidential information
- G.S. 143-58.1: Unauthorized use of public purchase or contract procedures for private benefit
- G.S. 143-63: Financial interest of officers in sources of supply; acceptance of bribes

State gov't only

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### The Uniform Guidance

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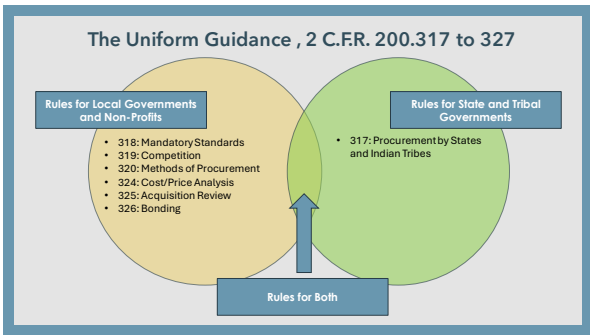
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### The Uniform Guidance, 2 C.F.R. 200.317 to 327

Rules for Local Governments and Non-Profits

- 318: Mandatory Standards
- 319: Competition
- 320: Methods of Procurement
- 324: Cost/Price Analysis
- 325: Acquisition Review
- 326: Bonding

Rules for State and Tribal Governments

- 317: Procurement by States and Indian Tribes

Rules for Both

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### 2 C.F.R. 200.317

When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds.

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### Rules for Both State and Local Governments

 321: Socioeconomic Contracting

 322: Domestic Preferences

 323: Recovered Materials

 327: Contract Provisions

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Thank You!



Crista M. Cuccaro  
[cuccaro@sog.unc.edu](mailto:cuccaro@sog.unc.edu)

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