

RECOMMENDED QUESTIONS TO BE CONSIDERED BY CONTRACT ADMINISTRATORS

In addition to the specific issues requiring review by G.S. §114-8.1 and the checklist, it is recommended that the following questions be considered in connection with the review of individual contracts. It may also be beneficial for agency contracting personnel to review these questions with their attorneys in regard to the procurement and contract administration process in general.

- For service contracts, does contractor's proposal/bid identify a project manager, key personnel or other point of contact who will be primarily responsible for overseeing the performance of the contract on behalf of the contractor?
- Did the RFP/IFB request contractor to list the experience of the contractor and/or its project management personnel?
- Did the RFP/IFB request contractor to provide references for recent similar projects? Did the evaluators check the references and, of the references provided by the contractor, were the references similar to the project/scope of the work of the proposed contract?
- Does contract (RFP, IFB, proposal and/or bid) include any methods, processes, procedures, milestones, benchmarks, expectations, deliverables, project/delivery schedules, and/or reporting that will allow the using agency to monitor the contractor's performance?
- Does the contract (RFP, IFB, proposal and/or bid) include any process, method, limitation and/or procedure for modifying, amending and/or changing the contract's scope of the work and/or adjusting the contract price resulting from changes that arise during the performance of the contract?
- Does any such process, method, limitation and/or procedure comply with State laws, regulations and/or an agency's internal policies/controls for amending state contracts (e.g., review by the Division of Purchase and Contract, Board of Award, agency head approval, etc.)?
- For service contracts, does RFP/IFB designate a contract administrator, project manager or such other employee/agent for the using agency who will be responsible for monitoring contractor's performance? If yes, does this provision state that: all official and binding communications by the using agency shall only come through the designated contract administrator; and the contractor shall direct all its communications to the using agency concerning the contract to the designated contract administrator?
- Does the contract set forth any closeout procedures?
- Is contract closeout and final payment conditioned on: contractor's satisfactory completion of the proposed contract's scope of work, timely completion of all deliveries, deliverables and/or services; there are no outstanding disputes or claims between the contractor and the using agency; and, except for warranty and maintenance issues and claims, the parties will release any and all claims relating to the subject contract?
- Does the proposed contract, in the event of a material breach of the contract, reserve the agency's right to setoff its actual damages, costs to complete the performance of the contract, and/or retainage due the contractor under the contract? *The use of liquidated damages against payments is a delicate legal matter that should be used only in appropriate circumstances and with advice of experienced purchasing officials or counsel.*