

**November 29, 2004**

**THE UNIVERSITY OF NORTH CAROLINA (UNC)  
AND THE DIVISION OF PURCHASE & CONTRACT (P&C)  
OF THE DEPARTMENT OF ADMINISTRATION  
MEMORANDUM OF UNDERSTANDING (MOU)**

During the 2003 Session of the North Carolina General Assembly, The University of North Carolina (UNC) and the Division of Purchase & Contract (P&C) collaborated in the passage of House Bill 975 (Session Law 2003-228) and House Bill 1070 (Session Law 2003-312). In order to leverage the benefits of cooperation between the two organizations, representatives from UNC and P&C have been working on a common set of principles and interpretations under which the authorizing legislation is to be implemented. This memorandum of understanding is the next step in the development of the partnership between UNC and P&C.

Through this memorandum, UNC and P&C express their common understanding of the principles and interpretations by which UNC procurements will be managed under the new legislation. Central to this understanding is our agreement on the following principles:

1. Both UNC and P&C are committed to working together in a spirit of partnership;
2. The activities conducted and the decisions made under this memorandum will take place in a cooperative and mutually satisfactory fashion;
3. The authority of the UNC Board of Governors to set and oversee purchasing benchmarks, in consultation with P&C, is fully acknowledged;
4. The goal of the partnership is to maximize the benefits of University procurement to enhance the academic, research and service missions of the UNC institutions;
5. UNC has the responsibility to capture the most favorable value proposition ("best value") for its institutions through educational discounts, strategic partnerships with vendors, or other proven business practices;
6. Academic, research and service needs are part of what determines "best value" in the context of procurement in the higher education environment;
7. UNC remains committed to adhering to the requirements of State and Federal regulations to seek competition whenever possible, maximize purchasing power, promote the use of historically underutilized businesses, and to adhere to sound business practices.

Based on these principles, UNC and P&C agree to the following provisions:

1. UNC and its constituent institutions may purchase from sources other than vendors on state contracts when the cost is less and the purchase value is within the institution's purchasing benchmark;
2. UNC may pursue collaborative procurement opportunities;
3. Because of the potential to realize greater value for the state and its universities through educational discounts and related strategic alliances, UNC may establish contracts for goods and services, consistent with G.S. 116-13;
4. In determining purchasing benchmarks for its institutions, UNC will consult with P&C in assessing an institution's capacity for assuming additional responsibility;
5. Nothing in this Memorandum of Understanding is intended to conflict with or supercede the intent or purpose of the Memorandum of Understanding (dated May 15, 2000) between UNC and the North Carolina Office of Information Technology Services (ITS) for information technology procurement;
6. Nothing in this MOU is intended to restrict the purchasing flexibility as articulated in G.S. 116-13 and G.S. 116.31.10.

### **House Bill 975 – An Act to Provide Purchasing Flexibility for the University of North Carolina (Session Law 2003-228)**

This legislation originated from the University's desire to respond quickly and efficiently in a competitive environment driven by academic, research, and service needs. Accordingly, this legislation gives to the University more flexibility and responsibility for procurement decisions.

In order to maximize the benefits of this increased flexibility and responsibility, UNC and P&C have agreed to a common set of interpretations as a key feature of our memorandum of understanding.

G.S. 116-13 (a), as rewritten, affirms that the Board of Governors is subject to the provisions of Chapter 143 and 146 of the General Statutes, but provides for a qualified exemption when a purchase is not covered by a state term contract and meets either of two conditions, as denoted in subdivisions (1) and (2).

Subdivision (1) provides for a blanket exemption for purchases funded 100% from sources other than the General Fund or from tuition. In a mixed funding scenario, Subdivision (1) provides also an exemption if the level of State funding and tuition are 30% or less. If the level of State funding is above the 30% threshold, then the cited General Statutes apply. The 30% threshold allows a higher degree of oversight when significant state funds and tuition are in the funding mix.

Subdivision (2) addresses a more specific exemption for contract and grants. Again, the blanket exemption applies for purchases when 100% of the funding is from contract and grant sources. Under the mixed funding scenario for contracts and grants, a different threshold is applied due to the specificity of audit requirements and other controls imposed by government entities, sponsors, etc. Subdivision (2) also provides an exemption if the level of State funding and tuition are 50% or less. If the level of State funding is above the 50% threshold, then the cited General Statutes apply.

The paragraph in House Bill 975 following subdivisions (1) and (2) is very important. Purchases made pursuant to subdivisions (1) and (2) are required to conform to Chapter 143, Article 3 and adopted rules in 1NCAC 5A & B, except that no oversight or approval from the Secretary of Administration, the State Purchasing Officer, or the Board of Awards is required, regardless of dollar value. Therefore, this paragraph effectively re-instates the applicability of the law, but permits qualifying procurements to be made at the campus level. Such qualifying procurements may exceed an institution's purchasing benchmark.

GS 116-13 (b) authorizes a special responsibility constituent institution to purchase equipment, materials, supplies, and services from sources (i.e. vendors) other than those certified by the Secretary of Administration on term contracts, subject to conditions stated in subdivisions (1) through (4). This means that an item or service subject to a statewide term contract may be purchased from a vendor that is not a vendor on the statewide term contract. Such purchases may be made without regard to funding source, under the following conditions:

Subdivision (1): The purchase price, including the cost of delivery, is less than the cost under the state term contract;

Subdivision (2): The items are the same or substantially similar in quality, service, and performance as items available under state term contracts;

Subdivision (3): The cost of the purchase does not exceed the benchmark established under G.S. 116-31.10 (Note: Each institution has a purchasing benchmark approved by the UNC Board of Governors); and

Subdivision (4): The institutions notify the Department of Administration of purchases consistently being made under this provision so that State term contracts may be improved.

UNC recognizes that statewide term contracts continue to offer attractive pricing and should be used whenever the provisions of G.S 116-13(b) do not apply. The University further recognizes that a benefit of our partnership is to be good stewards of the State's resources. In that regard, the University commits

resolutely to notify P&C of purchases consistently being made under this provision in a collaborative effort to improve contract pricing.

House Bill 975 addresses services and goods acquired by the University, including but not limited to contracts for maintenance, moving services, office supplies, lab supplies, chemicals, vehicles, and furniture. Accordingly, the University and P&C acknowledge that House Bill 975 permits the use of the following practical applications as part of UNC's commitment to maximize the benefits of the increased flexibility:

1. UNC will continue to use State contracts where the flexibility in G.S. 116-13(b) does not apply;
2. UNC may establish institution or entity specific term contracts that address the needs of UNC;
3. UNC may use Government Services Contracts (GSA) when there is a sole source purchase to be made, where advantageous and within the institution's purchasing benchmark; and
4. UNC may and is encouraged to utilize emerging technologies to improve purchasing processes.

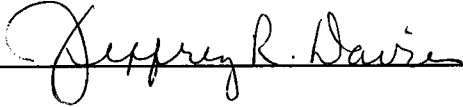
**House Bill 1070 – An Act to Increase the Expenditure Benchmark for a Special Responsibility Constituent Institution for Certain Purchasing Contracts (Session Law 2003-312)**

G.S. 116-31.10, as rewritten, authorizes the UNC Board of Governors to set separate benchmarks for each institution at amounts not greater than \$500,000. UNC re-iterates its commitment to consult with the Director of Purchase and Contract and the Director of the Budget prior to setting institutional benchmarks.

UNC recognizes that P&C has certain statutory authority and oversight responsibility. For those institutions with a benchmark greater than \$250,000, the institutions agree to submit to P&C a copy of all offers received and the institution's recommendation of award for purchases greater than \$250,000 but not greater than \$500,000. P&C agrees to review the recommendation of award and either approve such recommendation or advise other action deemed necessary, in as timely a fashion as possible while meeting its responsibilities and providing high quality support to the UNC community. With the goal of maintaining responsiveness and facilitating effective communication between UNC and P&C, both entities agree to jointly develop a tracking mechanism to measure response time. Such a tracking mechanism is intended to facilitate problem resolution and to promote process improvement.

Based on these principles and understandings, incorporated either directly or by reference, UNC and P&C endeavor to work cooperatively to be good stewards of the State's precious resources.

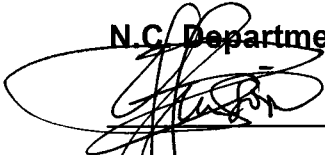
**University of North Carolina**



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