

<b>STATE OF NORTH CAROLINA</b>  <b>NORTH CAROLINA CENTER FOR GEOGRAPHIC INFORMATION AND ANALYSIS</b>	<b>Request for Proposal Lite No.</b> RFP-41-DIT-1189645431
	<b>Offers will be publicly opened:</b> 09/26/2024 By 2:00PM EST.
	<b>Issue Date:</b> 08/30/2024
<b>Refer <u>ALL</u> inquiries regarding this RFQ to:</b>  Belinda Edwards belinda.edwards@nc.gov Via the Ariba Sourcing Tool Message Board	<b>Commodity Number:</b> 811516
	<b>Description:</b> Photogrammetry Services
	<b>Using Agency:</b> NCDIT - CGIA
<b>See page 2 for mailing instructions.</b>	<b>Requisition No.:</b> N/A

### **OFFER AND ACCEPTANCE**

The State seeks offers for the Software, Services and/or goods described in this solicitation. The State's acceptance of any offer must be demonstrated by execution of the acceptance found below and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: In cases of conflict between documents comprising the contract, the order of precedence shall be (1) Best and Final Offers, if any, (2) special terms and conditions specific to this Request for Qualification-RFQ, (3) specifications, (4) Department of Information Technology Terms and Conditions of this RFQ, and (5) the agreed portions of the awarded Vendor's offer. **No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.**

### **EXECUTION**

In compliance with this RFQ and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services or goods offered, within the time specified herein. By executing this offer, I certify that this offer is submitted competitively and without collusion.

**Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.**

OFFEROR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY, STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING:	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

### **ACCEPTANCE OF OFFER**

If any or all parts of this RFQ are accepted, an authorized representative of NC Department of Information Technology shall affix their signature hereto. A copy of this acceptance will be forwarded to the successful vendor(s).

<b><u>FOR STATE USE ONLY</u></b>	
Offer accepted and contract awarded this	, as indicated on attached certification,
by	(Authorized representative of NC Department of Information Technology).

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**1.0 INTENT, USE, DURATION AND SCOPE**

The purpose of this Request for Qualification is to evaluate private photogrammetric firms for the acquisition of new 4-Band (RGBIR), leaf-off, digital 6” resolution aerial imagery and production of 4-band digital orthorectified imagery for the North Carolina Center for Geographic Information and Analysis (CGIA), on behalf of the NC 911 Board. These products and services fulfill base layer requirements for 911 emergency response and must be produced in accordance with the North Carolina Technical Specifications for Digital Orthophoto Base Mapping (<https://it.nc.gov/documents/files/north-carolina-technical-specifications-digital-orthophoto-base-mapping/open>), the state standard for orthoimagery acquisition and production. Products and Services will be provided in accordance to the terms and conditions of this solicitation.

This request is for qualification of Vendors to subsequently submit offers on specific scopes of work in NC during the qualification term. It does not guarantee that any Vendor will be awarded work during the term of the qualification.

**Background**

The selection process used for this procurement action is a Qualifications-Based Selection (QBS). QBS is a competitive procurement process that requires the State to select Vendors based on their qualifications and demonstrated competence. QBS prohibits the use of cost as a factor in the initial evaluation and selection of the Vendors. Instead, Vendors are ranked based on their qualifications and experience. After identifying the top Vendors, only then may the State enter into negotiations for a fair and reasonable price. The selection of the Vendors will be based on the (1) qualifications of the Vendors for the professional services required and (2) demonstrated competence, and without regard to cost in accordance with North Carolina General Statute 143-64.31. Thereafter, the State will negotiate a contract for services for individual projects over the next three years, dependent on the availability of funding, outlined in separate scopes of work with the best-qualified Vendors. If a contract cannot be negotiated with the best-qualified Vendors, negotiations with those Vendors shall be terminated and initiated with the next best-qualified Vendors. CGIA intends to contract with multiple Vendors to perform the scope of services for projects for up to five subsets of each Project Area. Contracted Vendors will be assigned similar technical tasks within each respective Study Area. Other State and Local organizations may also submit scopes of work for additional projects to qualified Vendors during the term of the qualification.

Joint Ventures will not be permitted under this contract. Each proposal submitted must designate a firm that will be solely under contract with, and report directly to the contracting agency. This firm will be considered the prime firm and, as such, will be responsible for subcontracting with and managing its project team member firms.

## Table 1: ANTICIPATED QUALIFICATION SCHEDULE

The Agency Procurement Agent will make every effort to adhere to the following schedule:

Action	Responsibility	Date
Request for Qualification Issued	Agency	8/29/2024
Written Questions Deadline	Potential Vendors	9/12/2024
Agency's Response to Written Questions of Qualification Addendum Issued	Agency	9/17/2024 By 2:00PM EST.
Vendor Submittal Opening Deadline	Vendor(s)	9/26/2024 By 2:00PM EST.
Qualification Evaluation	Agency	10/17/2024
Qualification Announcement	Agency	10/18/2024
Protest Deadline	Responding Vendors	15 days after award
State to Issue Scopes of Work for 2025 Project to subset of pre-qualified vendors	Agency	10/18/2024
Cost proposal call with selected vendors	Agency and selected Vendors	10/23/2024
Technical cost proposals due	Selected Vendors	11/12/2024
Negotiations with Finalists (if necessary)	Agency designees and selected Vendor(s)	11/19/2024

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Tenant key: ncgov@m.webex.com

Video ID: 116 698 081 4

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## **2.0 GENERAL INFORMATION**

### **2.1. VENDOR QUESTIONS**

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best bid possible. To accommodate the Bid Questions process, Vendors shall submit any such questions by the “**Submit Written Questions**” date and time provided in the RFP SCHEDULE Section above, unless modified by Addendum.

Questions related to the content of the solicitation, or the procurement process should be directed to the person on the title page of this document via the Sourcing Tool's message board by the date and time specified in the RFP SCHEDULE Section of this RFP. Vendors will enter “**Questions Solicitation RFP-41-DIT-1189645431**” as the subject of the message. Question submittals should include a reference to the applicable RFP section. This is the only manner in which questions will be received.

Questions or issues related to using the Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM ET to 5:00 PM ET.

Questions received prior to the submission deadline date, the State's response, and any additional terms deemed necessary by the State will be posted in the Sourcing Tool in the form of an addendum and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in the RFP and an addendum to this RFP.

### **2.2. ADDENDA**

The State may issue addenda if Vendor questions are permitted as described below, or if additional terms, specifications, or other changes are necessary for this procurement. All addenda shall become an Addendum to this RFQ.

### **2.3. OFFER SUBMITTAL**

Due Date: September 26, 2024

Time: 2:00 Eastern Time

**IMPORTANT NOTE:** This is an absolute requirement. Late bids, regardless of cause, will not be opened or considered, and will be automatically disqualified from further consideration. Vendor shall bear the sole risk of late submission due to unintended or unanticipated delay. It is the Vendor's sole responsibility to ensure its bid has been received as described in this RFP by the specified time and date of opening. Failure to submit a bid in strict accordance with instructions provided shall constitute sufficient cause to reject a Vendor's bids(s). Solicitation responses are subject to Sealed Bidding requirements.

Vendor's bids for this procurement must be submitted through the Sourcing Tool. For training on how to use the Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site: <https://eprocurement.nc.gov/training/vendor-training>

Questions or issues related to using the Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST.

#### Tips for Using the Sourcing Tool

1. Vendors should review available training and confirm that they are able to access the Sourcing Event, enter responses, and upload files well in advance of the date and time response are due to allow sufficient time to seek assistance from the North Carolina eProcurement Help Desk.
2. Vendors may submit their responses early to make sure there are no issues, and then submit a revised response any time prior to the response due date and time. The State will only review the most recent response.
3. Vendors should respond to all relevant sections of the Sourcing Event. Certain questions or items are required in order to submit a response and are denoted with an asterisk. The Sourcing Tool will not allow a response to be submitted unless all required items are completed. The Sourcing Tool will provide error messages to help identify any required information that is missing when response is submitted.
4. Simply saving your response in the Sourcing Tool is not the same as submitting your response to the State. Vendors should make sure they complete the submission process and receive a message that their response was successfully submitted.
5. Only Bids submitted through the Content Section of the Ariba Sourcing Event will be considered. Bids submitted through the Message Board will not be accepted or considered for award.
5. Only Bids submitted through the Content Section of the Ariba Sourcing Event will be considered. Bids submitted through the Message Board will not be accepted or considered for award.

If confidential and proprietary information is included in the quote, also submit one (1) signed, REDACTED copy of the quote. Such information may include trade secrets defined by N.C. Gen. Stat. § 66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132- 1.2. Vendor may designate information, Products, Services, or appropriate portions of its response as confidential, consistent with and to the extent permitted under the statutes and rules set forth above. By so redacting any page, or portion of a page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions determined to be confidential and proprietary and redacted as such, meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential.

If the Vendor does not provide a redacted version of the quote with its quote submission, the Department may release an unredacted version if a record request is received.

#### **Attempts to submit a proposal via facsimile (FAX) machine, telephone or email in response to this RFQ shall NOT be accepted.**

- a) All File names should start with the vendor's name first, in order to easily determine all the files to be included as part of the vendor's response. For example, files should be named as follows: Vendor Name-your file name.
- b) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .jpeg, or png format, and shall be capable of being copied to other sources.

c) If the vendor's proposal contains any confidential information (as defined in Attachment B, Paragraph #18), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

#### Submission Format and Content

All proposals are limited to fifteen (15) pages exclusive of cover sheet and shall be typed using a font size 10 or larger on 8 ½" x 11" sheets, single spaced. Proposals containing more than 15 pages or that are improperly formatted will not be considered. Pages, sections, and paragraphs must be numbered for easy reference. The proposal shall be ordered and labeled per section as defined in Table 2:

Section	Requirements	Page Limit	Evaluation Weighting (%)
1	Letter of Interest	2	Required
2	Evaluation Criteria	15	100 %
3	Supporting Information and Exhibits	10	Required
4	Project Team Resumes	10	Required
5	Letters of Commitment/Certifications and Registrations		Required
6	Form SF 254		Required
7	Attachments and Addendums (Signed Bid Addendums, Execution of Letter of Qualifications, Attachment Number 1, Attachment Number 2, Attachment Number 3)		Required

**Table 2: Proposal Organization Format**

#### **Section 1 – Letter of Interest**

The Letter of Interest should be addressed to Ms. Joetta Brunson. This letter is limited to two (2) pages and shall contain the following information:

1. Summation or overview of information contained in the Vendor's proposal.
2. Listing of any civil or criminal indictments, guilty pleas, or convictions of offenses involving the Vendor or any principal within the past 5 years.
3. Statement regarding any possible conflict of interest on the part of the Vendors for this project.
4. Federal Tax Identification Number (FEID).
5. Date of registration and registration number with the North Carolina Secretary of State's Office.
6. Date of license and license number of Professional Land Surveyors with the Board of Examiners for Engineers and Land Surveyors.
7. Vendor's authorized officer, signature, date, Vendor's name, address, telephone number, FAX number, and email address.
8. Vendor's project contact person, signature, date, Vendor's name, address, telephone number, FAX number, and email address.
9. Vendor's authorized contracts negotiator, signature, date, Vendor's name, address, telephone number, FAX number, and email address.

#### **Section 2 – Evaluation Criteria**

The Vendor shall prepare and submit a response to RFQ Section 3.4.

### **Section 3 – Supportive Information and Exhibits**

The Vendor shall prepare and submit the following information:

- Listing of all affiliates and their legal addresses, including, but not limited to, subsidiaries, parent company, companies owned or controlled by the parent company, any company or firm having some mutual owners as the firm which does business with the firm and may or could be involved in any manner, shape, or form.
- Organizational chart of the proposed team for the project, including subcontractors.
- Maps and figures
- Overall summary of personnel to be assigned by discipline and professional registration.

### **Section 4 – Project Team Resumes**

Provide resumes of key personnel to be used on the project and their anticipated role (include professional registration information, such as license numbers).

### **Section 5 – Letters of Commitment**

Provide signed Letters of Commitment from the Prime and subcontractor(s).

### **Section 6 – Certifications and Registrations, Insurance**

The Vendors must have the financial ability to undertake the work and assume the liability. The Vendor shall submit the following information:

- Certified documentation that the Surveyor in responsible charge of the work is a registered Professional Surveyor in the State of North Carolina in good standing with the North Carolina Board of Examiners for Engineers and Surveyors.
- Certified documentation that prime and subcontractors providing professional services that are proposed to be performing land surveying are licensed in the State of North Carolina in good standing with the North Carolina Board of Examiners for Engineers and Surveyors in accordance with North Carolina General Statute 89C.
- Certified documentation that the prime firm and any of its corporate subsidiaries to be used on the project, as well as all team members, are properly registered to do business in North Carolina with the Office of the Secretary of the State.
- The photogrammetric firm performing the work and the professional in responsible charge of the work must be licensed (firm and professional) in the State of North Carolina and must have good ethical and professional standing.
- It will be the responsibility of the prime Vendors to verify any corporate subsidiary is registered with North Carolina with the Office of the Secretary of the State prior to submitting a Letter of Interest.
- If necessary, the selected Vendors may be prepared to furnish proof of Professional Liability insurance coverage as well as provide evidence of General Liability as referenced in the Terms and Conditions.

### **Section 7 – Form SF 254**



The Vendor shall submit Form SF254 as signed documentation for the Prime and each subcontractor(s). This document may be obtained at <https://ncdoa.s3.amazonaws.com/s3fs-public/documents/files/sf254-word.doc>

## **Section 8 – Bid Addendums**

The Vendor shall submit signed RFQ Bid Addendum postings

### **2.4. BASIS FOR REJECTION**

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State. Vendor contact regarding this RFQ with anyone other than **Enter Purchasing Agent's name**, may be grounds for rejection of said Vendor's offer.

### **2.5. LATE OFFERS**

Regardless of cause, late offers will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late offers will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

### **2.6. NON-RESPONSIVE OFFERS**

Vendor offers will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:

- "This offer does not constitute a binding offer",
- "This offer will be valid only if this offer is selected as a finalist or in the competitive range",
- "Vendor does not commit or bind itself to any terms and conditions by this submission",
- "This document and all associated documents are non-binding and shall be used for discussion purposes only",
- "This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties", or
- A statement of similar intent.

### **2.7. NOTICE TO VENDORS**

**The State objects to and will not be required to evaluate or consider any additional terms and conditions not previously agreed to by the State and submitted with an Offeror's response. This applies to any language appearing in or attached to the document as part of the Offeror's response. By execution and delivery of this RFQ and response(s), the Offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.**

### **2.8. E-PROCUREMENT SOLICITATION**

**This is an E-Procurement solicitation.** See Paragraph #31 of the attached Department of Information Technology Terms and Conditions.

- a) General information on the E-Procurement service can be found at <http://eprocurement.nc.gov/>

- b) Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service at the following web site: <https://vendor.ncgov.com/vendor/login>
- c) As of the RFQ submittal date, the Vendor must be current on all E-Procurement fees. If the Vendor is not current on all E-Procurement fees, the State may disqualify the Vendor from participation in this solicitation.

## **2.9. DISTRIBUTORS AND RESELLERS – RESERVED**

## **2.10. POSSESSION AND REVIEW**

During the evaluation period and prior to award, possession of the bids and accompanying information is limited to personnel of the issuing agency, and to the committee responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

After award of contract the complete bid file will be available to any interested persons with the exception of trade secrets, test information or similar proprietary information as provided by statute and rule. Any proprietary or confidential information, which conforms to exclusions from public records as provided by N.C.G.S. §132-1.2 **must be clearly marked as such in the offer when submitted.**

## **2.11. BEST AND FINAL OFFERS (BAFO)**

The State may request BAFOs from the Vendor(s). If negotiations or subsequent offers are solicited, the Vendor(s) shall provide BAFO(s) in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration from being pre-qualified. The State will evaluate BAFO(s), oral presentations, and product demonstrations as part of the Vendors' respective offers to determine the final rankings.

## **2.12. AWARD**

The State reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated specifications as to quantity, quality, delivery, service, geographical areas; and where other factors are deemed to be necessary or proper to the purchase in question.

A link to the NC electronic Vendor Portal (eVP) allows the public to retrieve contract award information electronically from the web site: <https://evp.nc.gov/solicitations/> Results may be found by searching by RFQ number or agency name. This information may not be available for several weeks depending upon the complexity of the acquisition and the length of time to complete the evaluation process.

## **2.13. POINTS OF CONTACT**

Contact by the Offeror with the persons shown below for contractual and technical matters related to this RFQ is only permitted if expressly agreed to by the purchasing lead named on page 4, or upon award of contract:

<b>Vendor Contractual Point of Contact</b>	<b>Vendor Technical Point of Contact</b>
<b>[NAME OF VENDOR]</b> Street: <b>[STREET ADDRESS]</b> <b>[CITY, STATE, ZIP]</b> Attn: <b>Assigned Contract Manager</b>	<b>[NAME OF VENDOR]</b> Street: <b>[STREET ADDRESS]</b> <b>[CITY, STATE, ZIP]</b> Attn: <b>Assigned Technical Lead</b>

## 2.14 SOURCE SELECTION

A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award this RFQ to the Vendor providing the Best Value and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with or traded-off against other non-price factors.

- a) Evaluation Process Explanation. State Agency employees will review all offers. All offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFQ or Offer shall have specific page numbers and sections stated in the reference.
- b) To be eligible for consideration, Vendor's offer must substantially conform to the intent of all specifications. Compliance with the intent of all specifications will be determined by the State. Offers that do not meet the full intent of all specifications listed in this RFQ may be deemed deficient. Further, a serious deficiency in the offer to any one (1) factor may be grounds for rejection regardless of overall score.
- c) The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina to discuss technical and contractual aspects of the offer.

Vendors are advised that the State is not obligated to ask for or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.

## 2.15 EVALUATION CRITERIA

Evaluation shall include best value, as the term is defined in N.C.G.S. § 143-135.9(a)(1), compliance with information technology project management policies as defined by N.C.G.S. §143B-1340, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation. The following Evaluation Criteria are listed in Order of Importance.

*(The evaluation criteria should be changed to fit the needs of the specific procurement and should be Listed in Order of Importance. **But please NOTE: The first three criteria and Financial Stability are all mandatory criteria per G.S. that must be included and evaluated for every procurement.**) The following are suggested criteria and are not meant to be a final list for your RFQ solicitation.]*

- 1) Successfully completed projects, past performance on similar projects, and available capacity.
- 2) How well the Vendor's offer conforms with the solicitation specifications in Section 3.4 of the RFQ.
- 3) Adequate equipment, product storage and capacity.
- 4) Technical specifications approaches. (Techniques and approaches that meet the specific geographic regions of our projects)
- 5) How each Vendor's offer compares with other Vendors' offers *(this criterion also aligns with substantial conformity wherein the purchasing agency **compares** the relative strengths and weaknesses of the offers and must be included)*
- 6) Risks associated with Vendor's offer including errata and exceptions taken *(The agency should focus on identifying risks and mitigating risks such as financial stability, EULAs, reliance on third parties, and technical risks that have not been identified elsewhere in the solicitation.)*

## **2.16. RFQ AWARD**

It is the general intent to qualify as many Vendors as possible that substantially conform to the specifications. As provided by statute, award will be based on Best Value Analysis, in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302.

A link to the eVP System allows the public to retrieve contract award information electronically from the Internet web site: Results may be found by searching by RFQ number or agency name. This information may not be available for several weeks depending upon the complexity of the acquisition and the length of time to complete the evaluation process.

## **3.0 SPECIFICATIONS**

### **3.1. VENDOR STANDARD AGREEMENT(S)**

The terms and conditions of Vendor's standard license, maintenance or other agreement(s) applicable to Software and other Products acquired under this Agreement may apply to the extent such terms and conditions do not materially change the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the Vendor's standard agreement(s), the terms and conditions of this Agreement relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the Terms and Conditions herein shall apply in all cases and supersede any provisions contained in Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns; nor arbitrate any dispute, nor pay late fees, legal fees or other similar costs.

### **3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.**

In accordance with N.C.G.S. §143B-1361(b), Vendor must detail in the RFQ response, the manner in which it intends to utilize resources or workers located outside the U.S. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:

- a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.
- b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors.
- c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States.
- d) Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Will any work under this contract be performed outside the United States? ☐ YES ☐ NO

If Vendor answered "YES" above, list the location(s) outside the United States where work under this contract will be performed by Vendor, any sub-contractors, employees, or other persons performing work under the contract.

### 3.3. E-VERIFY

Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

### 3.4 REQUIREMENTS AND SPECIFICATIONS SPECIFIC TO THIS QUALIFICATION

#### a. Licensing

- i. The Vendor shall demonstrate capacity for a North Carolina Professional Land Surveyor (PLS) to sign and seal photogrammetric reports and deliverables as part of the NC Statewide Orthoimagery Program.

#### b. Successfully completed projects, past performance on similar projects, and available capacity

- i. The Vendor shall demonstrate a record of successfully completed projects and past performance by project team members (prime Vendor, subcontractors, and consultants) on contracts of comparable scope and size with government agencies and/or private industry within the last five (5) years. Particular note should be made of past projects involving project team members working together on similar projects and previous

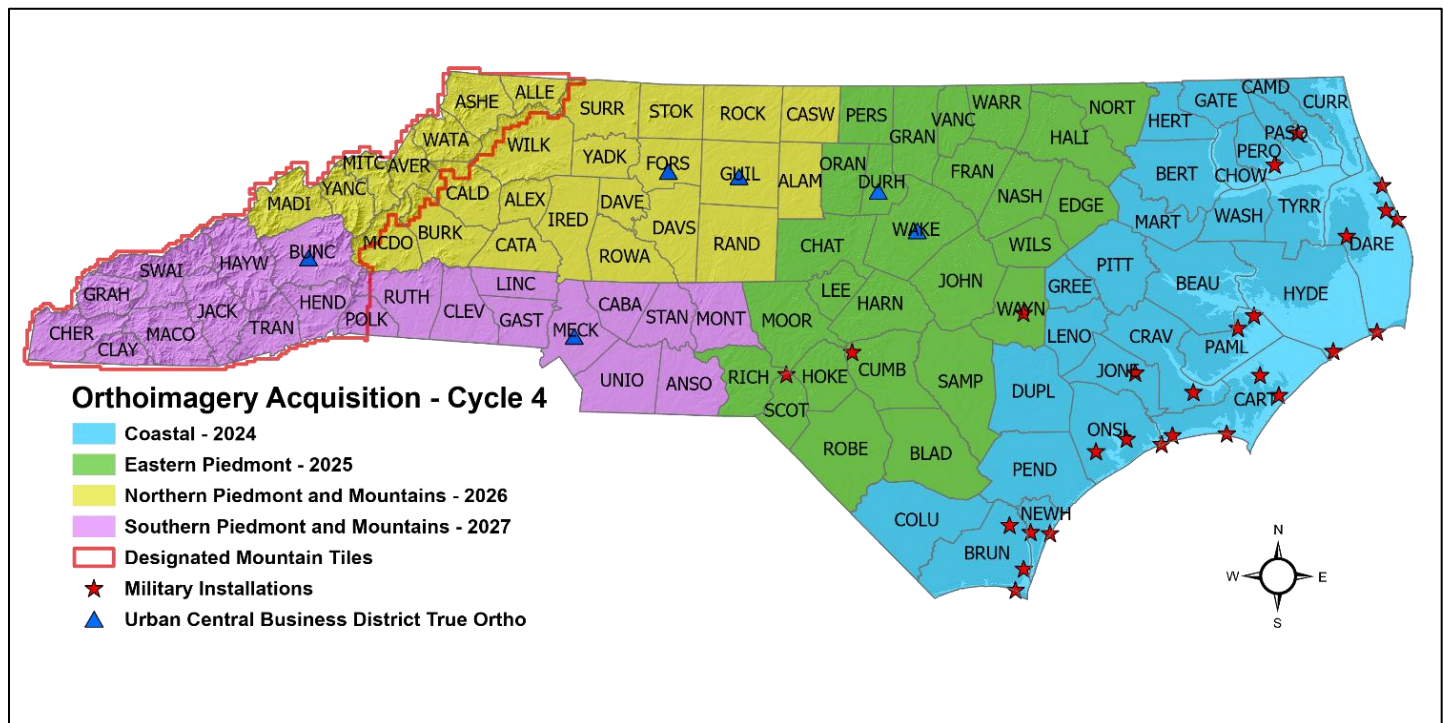


Figure 1: Orthoimagery Acquisition Cycle and Project Areas

experience working within North Carolina and with similar orthoimagery resolution for state or local governments.

- ii. The Vendor shall describe any quantitative quality metrics and contracting entity's formal performance evaluation reports (if not provided, state such) pertaining to relevant recent projects.
- iii. The Vendor shall provide a workload matrix of your most recent two years of previous engagements, current assignments, and contracted forecasts over the next two years noting special considerations for state awarded projects.
  - a. Provide the number of primary staff assigned to each project and demonstrate the Vendor's capacity to support this project or the intent to acquire additional resources.

**c. Orthoimagery Acquisition Systems**

- i. The Vendor shall describe their capability of the prime Vendor's project team to secure appropriate equipment and to maintain adequate capacity for product storage and short-term repository to include the following: Vendor to provide with their prequalification offer a concise summary matrix of the following requirements:
  - 1. All digital camera systems proposed and available.
  - 2. Proposed aircraft
  - 3. Factory Calibration Date
  - 4. Planned ground footprint dimensions in feet for cross track
  - 5. Planned ground footprint dimensions in feet for along track
  - 6. Approved for NC Validation Range (2012-2023) if available
- ii. Vendor to include with their prequalification offer the following information:
  - 1. List equipment (field and office) and licensed software that are available and would be designated for use on this project. Include the description (type, version number, number of licenses).
  - 2. Identify aircraft, digital aerial camera systems, and GNSS-IMU systems used to acquire aerial imagery.
  - 3. Identify any planned maintenance outages for aircraft and planned conflicts for the acquisition period.
  - 4. Identify acquisition systems (changed digital camera, GNSS-IMU system, and aircraft combinations) planned for this project that were not approved from NC Validation Range flights for any of the 2012-2024 projects as follows:
    - a. ADS 100
    - b. DMC I
    - c. DMC II 140
    - d. DMC II 230
    - e. DMC II 250
    - f. DMC III
    - g. UltraCam Eagle 80
    - h. UltraCam Eagle 100



- iii. Identify the factory calibration date for all proposed digital camera systems.
- iv. Identify all potential operations bases for proposed aircraft and digital aerial camera systems.
- v. Identify proposed digital camera systems' planned ground footprint dimensions in feet for cross track and along track coverage based on capturing color digital imagery with a 6-inch pixel resolution at acquisition.

**d. Control and Check Points**

- i. Vendor to describe their ability to plan and survey sufficient ground control to use with airborne GNSS-IMU control to produce orthoimagery tiles that meet ASPRS horizontal accuracy for 6-inch orthophotos, 1" = 100' scale with a limiting RMSE of 1.0 feet in each X and Y.
- ii. Describe ability to plan, survey and establish control point locations and submit a Control Surveys Report that shall be signed and sealed by the North Carolina PLS in responsible charge.

**e. Flight Plan Methodology**

- i. Vendor to describe experience developing and submitting a Flight and Control Plan based on the following flight planning specifications and evaluation criteria:
  - 1. Flight plan that minimizes overall cost to the state for the production and delivery of leaf-off, 6-inch, 4-band orthoimagery based on the proposed equipment and procedures.
  - 2. Describe approach for 2-D flight planning with flying height set to average mean elevation over the planned flight line.
  - 3. Describe approach for 3-D flight planning using a DEM that accounts for minimum and maximum ground sample distance resolution, minimum forward overlap, and minimum side overlap.
  - 4. Describe methods for ensuring minimum 33-degree sun angle during acquisition in non-mountain-designated tiles per Figure 1.
  - 5. Describe methods for ensuring minimum 38-degree sun angle during acquisition in mountain-designated tiles per Figure 1.
  - 6. Describe flight line orientation methods in mountain and non-mountain designated tiles.
  - 7. Describe ability to produce final products with the following Ground Sample Distance requirements:
    - a. Nadir Ground Sample Distance (GSD)

- i. Nadir GSD shall be between 0.15 feet to 0.50 feet for 75% of planned exposures for frame-based cameras or pseudo exposures for push broom cameras.
    - ii. Nadir GSD shall not be less than 0.12 feet or greater than 0.53 feet of planned exposures or pseudo exposures for the push broom cameras.
    - iii. For push broom cameras, GSD nadir values will be computed at pseudo exposure station spacing along the flight line at 200-foot intervals.
  - b. Transportation Feature Ground Sample Distance (GSD)
    - i. Transportation feature GSD shall be between 0.15 feet to 0.55 feet for 98.0% of tested points.
    - ii. Transportation feature GSD shall not be less than 0.10 feet or greater than 0.60 feet.
    - iii. For push broom cameras, transportation feature GSD values will be computed at a distance not to exceed 100-foot spacing along the flight line.
- 8. Describe ability and methods to ensure forward and side overlap coverage requirements:
  - a. Forward overlap shall be planned at a minimum of 60%
  - b. Side overlap shall be planned at a minimum of 30%
  - c. The sum of void areas produced from intersecting the planned minimum reduced (F60/S30) image footprints with the terrain as compared to a defined area (stereo overlap, county, AT Block, or other area) shall be less than 0.10%
  - d. Planned forward overlap shall not be less than a nominal 58% (based on maximum void area distance parallel to flight direction – see table below)
  - e. Planned side overlap shall not be less than a nominal 28% (based on maximum void area distance perpendicular to flight direction – see table below)
  - f. If a different digital camera system is being proposed other than the five identified here, then the response should include nominal 2% forward overlap and side overlap distance values assuming a 0.5 foot GSD.

Digital Camera	58% FOL Void Distance (ft.)	28% SOL Void Distance (ft.)
DMC I	77	138
DMC II - 140	112	121
DMC II - 230	141	156
DMC II - 250	147	172
DMC III	146	257
ADS100	n/a	200
UltraCam Eagle	131	200



- g. The principal points of the first two and the last two exposures of each flight strip shall fall outside the project area boundaries.
  - h. For pushbroom sensors, the flight design shall ensure the forward and aft imaging arrays coverage fall outside the ends of each strip to accommodate stereo viewing of the entire project area.
  - i. All side boundaries shall include an overlap at least equal to the side overlap specifications for the project.
- 9. Describe ability to conduct acceptable Validation Range mini-project for all acquisition systems proposed. Note, this task will not be required for acquisition systems (unchanged digital cameras) approved for Phases 1-4 of the 2016-2019, or Phases 1-4 of the 2020-2023, or Phase 1 of the 2024-2027 Orthoimagery Program cycle. Acceptance for each proposed digital camera system will be based on NCDOT's evaluation of NC validation range aerotriangulation and orthoimagery submission including QA/QC documentation and reports using NC's validation range and procedures. Specific information regarding these procedures can be found at <https://ncgs.state.nc.us/pages/Library.htm?DocType=ValidationRange>.
- ii. Describe methodology for developing True Orthoimagery Products
  - 1. Describe methods for ensuring minimum 38-degree sun angle during acquisition in True Orthoimagery designated areas.
  - 2. Describe flight line orientation methods for producing True Orthoimagery products in designated areas.
  - 3. Describe methods to meet requirements for nadir imagery acquisition minimum 80% forward and 80% side overlap to support True Orthoimagery generation.
- iii. Describe coordination for all military engagement to access restricted airspace on military installations such as Air Force Base Seymour Johnson, Fort Liberty, and Camp Mackall.
- f. Imagery Acquisition, Exploitation Image Post Processing, Quality Assurance/Quality Control (QA/QC), and Reporting**
  - i. Describe approach to perform color digital aerial imagery acquisition at a nominal pixel resolution of 0.5 feet following approved flight plan.
  - ii. Describe process to deliver a post-processed GNSS-IMU exterior orientation excel file for all acquired images for each and every sortie not to exceed five days after the flight date of each sortie. In addition to exterior orientation files for every sortie, describe additional documentation to support reflight assessment and conclusions for both missions marked for reflights and mission not marked as such.
  - iii. Describe exploitation image post-processing and radiometry matching to a target image provided by the project team.
    - 1. Vendor to describe how to perform exploitation image post-processing and provide 4-band 8-bit RGBIR sample exploitation images such that exploitation images are visually consistent and meet project specifications across all Study Areas.

2. Vendor to describe how to process 4-band 8-bit TIF imagery tiles at specified locations to demonstrate the application of radiometry guidelines received after exploitation image submittal.
  3. Vendor to describe ability to finalize tonal processing adjustments such that resultant orthoimagery is visually consistent within each Study Area, with adjacent Study Areas of other vendors, and with existing imagery.
  4. Describe ability to deliver a web map service that conforms to the Open Geospatial Consortium Web Map Service (OGC WBS) version 1.3 specification to demonstrate both internal and external radiometry matching and visual consistency.
- iv. Describe ability to submit an Imagery Acquisition Compliance Report per Aerotriangulation (AT) Block, which shall be signed and sealed by the NC PLS in responsible charge for the Study Area professional photogrammetric services. Image Acquisition Compliance Report submittals will be reviewed on the following:
1. Actual acquired image forward overlap using a 55% minimum.
  2. Actual acquired image side overlap using a 25% minimum.
  3. Actual acquired image nadir GSD of 0.50 feet.
  4. Actual acquired image transportation feature GSD of 0.50 feet.
  5. The principal points of the first two and the last two exposures of each flight strip shall fall outside the project area boundaries.
  6. For push broom sensors, the flight design shall ensure the forward and aft imaging arrays coverage fall outside the ends of each strip to accommodate stereo viewing of the entire project area.
  7. All side boundaries shall include an overlap at least equal to the side overlap specifications for the project.

**g. GNSS-IMU Post Processing, Aerotriangulation, DEM Update, Orthoimagery Product Generation, Processing Quality Assurance/Quality Control (QA/QC), and Reporting**

- i. Describe performance of airborne GNSS-IMU post-processing.
- ii. Describe ability to deliver a post-processed GNSS-IMU exterior orientation excel file for all acquired images for each and every sortie not to exceed five days after the flight date of each sortie.
- iii. Describe aerotriangulation process using ground survey control and airborne GNSS-IMU control.
  1. Describe use of manual or autocorrelated pass and tie point image measurements.
  2. Describe use of image measurements for frame sensors at the 9 traditional Von Gruber locations per image.
  3. Describe use of previous project ground control points (GCP) and horizontal quality control (HQC) photo-id check points as independent check points in the initial AT solution.
- iv. Describe submission of a GNSS-IMU Post-Processing & AT Report for each AT Block, which is required to be signed and sealed by the NC PLS in responsible charge for the

GNSS-IMU post-processing and AT portion of the Study Area professional photogrammetric services.

- v. Describe use of elevation data (as needed) at a density level sufficient to accurately represent the shape of the ground to produce orthoimagery free of distortions due to terrain, and that meets the required orthophoto accuracy standards.
- vi. Describe orthorectification using exploitation imagery, adjusted exterior orientation from AT and updated DEM elevation data to produce orthoimagery.
- vii. Describe seamline and elevation data editing to ensure accurate edge match between images and tiles; and also correction of image distortions and other artifacts caused by the orthorectification process.

**h. Digital Imagery Quality Assurance/Quality Control (QA/QC), Product Delivery and Data Acceptance Requirements**

- i. Vendor to describe macro level quality review steps to demonstrate adequate seamless orthoimagery that is visually consistent without distortions due to seamlines, elevation data, blurring, or other artifacts caused by the orthorectification process.
- ii. Describe ability to submit 4-band (RGBIR) TIFF files for all tiles assigned to an image service provider to facilitate end user quality review.
  - 1. Images will be delivered as a pre-defined set of tiles applicable to a group of counties as defined by the project team in two-week intervals.
  - 2. Images will be uncompressed GeoTIFF formatted ortho-rectified and referenced to the North Carolina State Plane Coordinate System, North American Datum (NAD83) (2011) epoch 2010.0 including a world file, GeoTIFF header version 6.0 as required by the State Standard.
- iii. Describe evaluation of quality review submitted issues and documentation of responses to those issues to demonstrate whether resolutions are practical or within scope.
- iv. Describe technical processes used to correct submitted issues.
- v. Describe delivery of final data to include:
  - 1. One set of uncompressed 4-band (RGBIR) GeoTIFF formatted ortho-rectified imagery tiles referenced to the North Carolina State Plane Coordinate System, North American Datum NAD83 (2011), including a world file, as required by the State Standard. Tiles also containing a GeoTIFF 6.0 header and using the file naming convention per the state standard.
  - 2. Orthoimagery Delivery Report pre-defined as a checklist of required items. This report is required to be signed and sealed by the North Carolina Professional Land Surveyor (PLS) in responsible charge.
  - 3. One fully attributed seamline polygon shapefile aligned with final delivery tiles and representative of all final seamline adjustments.
- vi. Describe ability to produce one FGDC compliant metadata record per county in both .xml and .txt file format that will meet the requirements to pass error-free through the USGS MP Parser online tool <http://geo-nsdi.er.usgs.gov/validation/>.
- vii. Describe resolution processes, including evaluation, correction, and re-submittal, for issues resulting from the field horizontal quality review performed by the NC Geodetic Survey after final delivery of imagery files.

**i. Optional photogrammetry product capabilities**

- i. Describe capabilities and considerations for higher resolution orthoimagery products than the normal 6-inch statewide orthoimagery in targeted areas pending on availability of local and county funding.
- ii. Describe capabilities and considerations for planimetric data creation as either new data or as an update to existing datasets in targeted locations.

**3.5. SECURITY SPECIFICATIONS**

*Note: ONLY one of the following sections (3.4.1) can typically be Reserved; you cannot Reserve both unless you are procuring only professional services. All bid responses for a solution must include the Vendor submitting a VRAR with their solution. Please delete this Note from the final draft. **IT IS MANDATORY TO HAVE YOUR END USER OR SECURITY SUBJECT MATTER EXPERT-SME COMPLETE THE HIGHLIGHTED SECTIONS OF THIS SECTION.***

**3.5.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE**

*(Include this section if relevant to solicitation, if not, then insert the word “Reserved” after the section title)*

Vendors shall provide a completed Vendor Readiness Assessment Report State Hosted Solutions (“VRAR”) at offer submission. This report is located at the following website:

<https://it.nc.gov/documents/vendor-readiness-assessment-report>

The 911 Board Statewide Orthoimagery Program will be required to receive and securely manage data that is classified Low Risk. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding this data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>

To comply with the State's Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls.

### **3.5.1 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE - RESERVED**

## **3.6 ENTERPRISE ARCHITECTURE SPECIFICATIONS**

*The following subsections (3.5.2 through 3.5.8) are Enterprise Architecture specifications. They may be removed for one of two reasons:*

- 1. The topic of the subsection is not relevant to the solicitation OR*
- 2. There are more detailed specifications provided by the agency for the topic in another section of the procurement document.*

*IF the subsection is not relevant, add the word “ – RESERVED” to the title of the specification and delete the clause text below...**Please keep the title in the document but delete the clause.***

## **ENTERPRISE, SERVICES, AND STANDARDS**

Agencies and vendors should refer to the Vendor Resources Page for information on North Carolina Department of Information Technology regarding architecture, security, strategy, data, digital, identity and access management and other general information on doing business with state IT process.

The Vendor Resources Page found at the following link: <https://it.nc.gov/vendor-engagement-resources>. This site provides vendors with statewide information and links referenced throughout the RFQ document. Agencies may request additional information.

### **3.6.1 ARCHITECTURE DIAGRAMS**

The provision of these two diagrams is a requirement at offer submission. If they are not supplied at that time, the Vendor's offer will be considered non-responsive and will not be evaluated. The two diagrams are Network Architecture and Technology Stack. The State utilizes architectural diagrams to better understand the design and technologies of a proposed solution. Details on these diagrams can be found at the following link: <https://it.nc.gov/resources/statewide-it-procurement/vendor-engagement-resources#Tab-Architecture-1192>

There may be additional architectural diagrams requested of the vendor after contract award. This will be communicated to the vendor by the agency as needed during the project.

### **3.6.2 SOLUTION ROADMAP**

A Solution Roadmap defines the vision and strategic elements of the solution. The Solution Roadmap is a plan of action for how a Solution will evolve over time. The minimum content should include:

- Vision for the solution
- High-level functionality expected for each solution release into production environment
- High-level timeline
- Description of how customer feedback is collected and incorporated into solution enhancements

Describe the solution roadmap for your product. Include content on release strategies for functionality, roadmap for technical architecture, how scalability of solution is planned.

### **3.6.3 IDENTITY AND ACCESS MANAGEMENT**

The proposed solution must externalize identity and access management. The protocols describing the State's Identity and Access Management can be found at the following link: <https://it.nc.gov/services/vendor-engagement-resources#Tab-IdentityAccessManagement-1241>

Describe how your solution supports the above protocols, as well as making them available for application integration/consumption.

### **3.6.4 INTEGRATION APPROACH**

Describe proposed solution capabilities to interoperate with other solutions. Identify the standards supported, integrations platforms, adaptors, APIs, and the like.

### **3.6.5 DISASTER RECOVERY AND BUSINESS CONTINUITY**

Describe the proposed solution capabilities related to the following areas:

Disaster Recovery Plan (DRP) – describe how proposed solution supports Recovery Point Objectives (RPO) and Recovery Time Objectives (RTO) metrics.

System Backup – describe backup plan capabilities.

Disaster Recovery Testing – describe the frequency and test procedures for end-to-end disaster recovery testing. Business Continuity Plan (BCP) – describe capabilities proposed solution can provide in support of agency's continuity of operations and incident responses.

### **3.6.6 DATA MIGRATION**

Describe approaches available for data conversion and/or data migration to load current data into proposed solution.

### **3.6.7 APPLICATION MANAGEMENT – RESERVED**

### **3.6.8 ACCESSIBILITY**

Describe in your offer how the proposed solution complies with industry accessibility standards.

Provide in your offer product documentation that demonstrates how the proposed solution is digitally accessible or if not fully accessible and provide the roadmap with timeline for remediation.

Standards include:

- W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1:  
<https://www.w3.org/TR/WCAG21/>
- Section 508: <https://www.section508.gov/>
- Voluntary Product Accessibility Template (VPAT®):  
<https://www.itic.org/policy/accessibility/vpat>

## **3.7. BRAND SPECIFIC PRODUCT – RESERVED**

## **3.8. DELIVERY - RESERVED**

If circumstances beyond the control of the contractor result in a late delivery [or installation], it is the responsibility and obligation of the contractor to notify the Purchasing Agent listed on the purchase order, in writing, immediately upon determining delay of shipment. The written notification should indicate the anticipated delivery dated.

## **3.9. CONTRACT TERM**

A contract awarded pursuant to this RFQ shall have an effective date as provided in the Notice of Award. The contract term for qualification shall be three (3) and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this qualification term for two (2) additional one (1) year periods at its sole discretion.

### **3.10 EFFECTIVE DATE**

This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing the Vendor for goods provided nor Services rendered prior to the appropriate signatures and the arrival of the effective date of the Agreement. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the Agreement.

### **4.0 FURNISH AND DELIVER (F & D MATRIX)-RESERVED**

### **5.0 HISTORICALLY UNDERUTILIZED BUSINESSES**

“Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.” <http://ncadmin.nc.gov/businesses/hub>

Pursuant to N.C.G.S. §§143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this RFQ.

Is Vendor a Historically Underutilized Business?

☐ YES ☐ NO

If “YES”, specify classification. \_\_\_\_\_

## 6.0 DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS:**
  - **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
  - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
  - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
  - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
  - **THE STATE:** Is the state of North Carolina and its agencies.
  - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this RFQ can be altered only by written addendum and that verbal communications from whatever source are of no effect.
- 5) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 6) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.
- 7) **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 8) **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation that is over \$25,000, they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days of the date of the contract award and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. RFQ status and Award notices are posted on the Internet at eVP.com. **All protests will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**



**VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available at the following website: <https://evp.nc.gov>.

This RFQ is available electronically on the electronic Vendor Portal (eVP) at the following website: <https://evp.nc.gov>.

- 9) **DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

## **7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

- 1) **DEFINITIONS:** Supplementing the Definitions appearing in the body of this solicitation, above:
- a) "Agency" means the Agency purchasing the goods or Services.
  - b) "Computer" means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the Data.
  - c) "Computer Data Base" means a collection of data in a form capable of being processed and operated on a Computer.
  - d) "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor or controller that is designed to cause the Computer, processor or controller to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and maintenance/diagnostics programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer Programs may be either machine dependent or machine-independent, and may be general purpose in nature or be designed to satisfy the requirements of a particular user.
  - e) "Computer Software" or "Software" means Computer Programs and Data Bases. Also, see, "Software" below.
  - f) "Computer Software Documentation" means technical data and information comprising Computer listings and printouts, in human readable form that:
    - i) Documents the design or details the Computer Software
    - ii) Explains the capabilities of the Software, or
    - iii) Provides operating instructions for using the Software to obtain desired results from a Computer.
  - g) "Custom or Modified Software" means Software that may be modified by the State, or by Vendor at the State's request or direction to perform in accordance with specifications.
  - h) "Data" means recorded information, regardless of form or method of recording.
  - i) "Deliverable"/"Product Warranties" shall mean and include the warranties provided for products or deliverables licensed to the State in Paragraph 2, and as included in Paragraph 7 c), of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
  - j) "Hardware" includes Computers, printers, attached equipment or peripherals or other equipment utilized for the State's intended purposes as expressed in the solicitation documents.
  - k) "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.

- l) "Services" means the obligations and duties undertaken by the Vendor to comply with the specifications and requirements in this solicitation.
- m) "Software" is "Packaged Copyrighted Software Products" (unless otherwise identified) as used in 09 NCAC 06A.0102(13) and means Computer Software that is used regularly for other than governmental purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices, that is considered "shrink-wrap" or "clickwrap", that is or may be generally licensed by "shrink-wrap" or "clickwrap" licenses, or Computer Software that does not constitute Custom or Modified Software and is regularly sold, licensed or leased by the Vendor to governmental entities to meet governmental requirements.
- n) "State" shall mean the State of North Carolina, NCDIT as an Agency, or an Agency in its capacity as the Award Authority.
- o) "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates maintenance and support Services, consulting, training and other agreed support Services provided by or through Vendor.
- p) "Use", in the context of Computer Software execution and operation in Section 2 and 3 hereinbelow, means storing, loading, installing, executing or displaying Software on a Computer, processor or controller, or making a copy of Software for archival or backup purposes only.

## **2) SOFTWARE LICENSE**

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use, in object code form only, all Software and related documentation furnished to the Agency under this Agreement. This license grant shall be limited to use with the Hardware (if any) or Products (if any) for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed in writing. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the Vendor's standard agreement.
- b) Software provided pursuant to this Solicitation may, in some circumstances, be accompanied by a clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the installation process for the Software. The sole purpose of any clickwrap agreement shall be to operate as the mechanism for the installation of the Software. All terms and conditions of any clickwrap agreement provided with any Software solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Software.
- c) The State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set forth in this Agreement, and any Exhibits or Amendments hereto. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Software; or portion thereof.
- d) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, and consistent with the security, records retainage or other policy of the Agency for archival or emergency purposes, or to replace a worn copy; but not for use in preparing derivative works unless expressly allowed by the Agreement or subsequent Statements of Work. Any copy of the Software or documentation must contain the same copyright notice and proprietary markings that are on the original Software.
- e) Use of Software on any Products other than that for which it was obtained, removal of Software from the United States or any other material breach shall automatically terminate this license.
- f) The State's license includes the right to upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's licensees without a separate maintenance or support agreement. Vendor's right to a new license for new version releases of the Software shall not be abridged by the foregoing.

- g) Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Vendor or subsequently upgraded by Vendor.
- h) The State's license neither transfers, vests nor infers any title or other ownership right in any intellectual property right of Vendor, or any third party. The State's license neither transfers, vests nor infers any title or other ownership right in any source code associated with the Software unless otherwise agreed by the parties, and will not be construed as a sale of any ownership rights in the Software, unless Custom or Modified Software is being developed as a Work For Hire in response to the State's solicitation documents.
- i) The State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

### **3) USE OF SOFTWARE AND INFORMATION**

- a) The State agrees that any Software or technical and business information owned by Vendor ("Information") or its suppliers or licensors and furnished to the State under this Agreement shall be and remain the property of the Vendor, or other party, respectively.
- b) All Software and information furnished to the State under this Agreement
  - i) Shall be used by the State only to install, operate or maintain the Product for which they were originally furnished;
  - ii) Shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this agreement; and
  - iii) Shall, together with any copies except copies for the Agency's and State's archival purposes containing the State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and
- c) All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. §132-1, *et seq.*
- d) Transfer of Software or program license:
  - i) Software may be transferred within the United States to any location for the State's normal operations upon written notice to the Vendor without additional cost(s). Transfers for temporary uses arising as a result of a disaster or disaster recovery test may be effected without notice to the Vendor; provided, however, that the State will employ its best efforts to advise the Vendor of any disaster related transfer requiring more than ten (10) business days. All other transfers may be permitted only with Vendor's prior written consent, and such consent shall not be unreasonably withheld. Transfers requiring Vendor's consent may be subject to an additional license fee.
  - ii) The rights granted herein are restricted for use solely by the State. The State may not authorize or allow the use or marketing of the Software/Products by or to a third party, and may not assign or transfer the Software or Products to a third party without the prior written consent of Vendor. Any assignee or transferee must execute a separate agreement with Vendor. Any such assignment or transfer shall terminate the obligations of the State under this Agreement
- e) Custom or Modified Software, if solicited by the State, is being developed or modified exclusively for the State, and such Custom or Modified Software, all related data, all copyrights in the Custom or Modified Software and derivative works belong exclusively to the State and shall be transferred to the State upon creation.

### **4) WARRANTY**

- a) Minimum warranties for Products shall include:
  - i) On the delivery date the Products and the associated Computer operating system Software will be in good working order (operating in conformance with Vendor's standard specifications and functions). Unless otherwise specified in the solicitation, the warranty for other suppliers'

- Software is included in the suppliers' Software package and is provided directly from the supplier.
- ii) The warranty shall be as provided or specified in the state's solicitation documents and shall begin on the day of successful installation. If no warranty period is specified, the warranty period shall be Vendor's standard warranty period for the Products, commencing the day of successful installation.
  - iii) The state shall notify Vendor if any Product is not in good working order during the warranty period. Vendor shall, at its option, either repair or replace any Product reported as not in good working order during the warranty period without charge to the State. The repair or replacement Products must be new or equivalent to new in performance and fully warranted the same as new. All returned Products will become property of Vendor at the time the Product is either placed in shipment to Vendor, or picked up by Vendor.
  - iv) The service provided during the warranty period is dependent upon the acceptable warranty option selected by the State and indicated in the State's solicitation document. If no warranty option is indicated, Vendor will provide their standard warranty service for the Product, unless otherwise agreed by the parties.
  - v) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates and terms set forth in such writing.
- b) Software warranties shall include the following:
- i) Vendor warrants the media (comprising diskettes, tapes or other media) to be free of defects in materials or workmanship under normal use for ninety (90) days from the date of acceptance unless otherwise agreed. Vendor shall replace any media reported as not in good working order during the warranty period without charge to the State. If Vendor is unable to replace the Software, Vendor shall refund the full amount of the Software purchase paid by the State.
  - ii) In addition to the warranty exclusions stated in Paragraph 5, Vendor does not warrant that the operation of the Software will be uninterrupted or error free, or that the Software functions will meet the State's requirements unless developed as Customized or Modified Software. The State assumes the risk of any damage or loss from its misuse or inability to use the Software.
  - iii) For any Customized or Modified Software provided pursuant to this Agreement, Vendor warrants that for a period of one (1) year after the State accepts said Software, it will operate and perform in accordance with the functions and specifications set forth in the solicitation and error free as the solution for the Agency. This express warranty applies only if the State specifically identifies the Hardware environment in which the Customized or Modified Software will be installed or operated, or if it is used in connection with Hardware acquired under this Agreement.
- c) Unless otherwise required by the State: Vendor warrants that its support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date support is provided or performance of the service. For a period of ninety (90) days after delivery or ninety (90) days after successful installation, Vendor or its suppliers shall provide telephone assistance to the State during the State's normal business hours.
- d) Vendor warrants to the best of its knowledge that:
- i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
  - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
  - iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.

- iv) The Software does not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the State's ability to use the Software for the term of this Agreement.

**5) WARRANTY EXCLUSIONS**

- a) Except as stated in Paragraph 4 (Warranty), Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, and specifically disclaim warranties of merchantability or fitness for a particular purpose as provided by N.C.G.S. §§25-2-316, 25-2-313 and 25-2-315; and as may be amended.
- b) The warranty provided in Paragraph 4) (Warranty) does not cover repair for damages, malfunctions or service failures caused by:
  - i) Actions of non-Vendor personnel;
  - ii) Failure to follow Vendor's installation, operation or maintenance instructions and/or Services provided to the State;
  - iii) Attachment to the Products of non-Vendor products or failure of Products not maintained by Vendor unless such installation or use is approved in writing by the Vendor; or
  - iv) Force Majeure conditions set forth hereinbelow.

**6) INTELLECTUAL PROPERTY INDEMNITY**

- a) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Software or Products supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in settlement against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
  - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
  - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- b) If any modifications to the Software applied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the Software, or to replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to take back any affected Software modifications, and refund any sums the State has paid Vendor for Services and the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge.
- c) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded Software, or from the continued use of the good(s) or Services after receiving notice they infringe on an intellectual property right of a third party.

**7) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY**

- a) For purposes of the exclusive remedies and limitations of liability set forth in this Paragraph, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or

attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

- d) For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:
  - i) To recover direct costs including replacement Products, if any, attributable to Vendor's delay, and
  - ii) To cancel the order without incurring cancellation charges.
  - iii) Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

#### **8) SUPPORT AND MAINTENANCE**

- a) Except as specifically provided herein or in an approved attachment hereto, and unless otherwise consistently provided by Vendor's standard agreement for support, and except for the provisions in the Vendor License Agreements paragraph above, an order for support will constitute the State's acceptance of the terms of the Vendor's standard agreement for Support in effect on the date of the order, subject to the order of precedence and the limitations in the Vendor's Standard Agreement(s) paragraph (above) as set forth in the Solicitation. Unless otherwise indicated herein, Support and Maintenance acquired herein will begin at the end of any applicable warranty period.
- b) To be eligible for support, Products or Software must be in good operating condition and at then current specified revision levels, having all enhancements, modifications, updates, or upgrades supplied by Vendor. Vendor may charge its standard rates in effect on the date support service is provided in addition to any other charges if the Product(s) or Software do not conform to the specified revision levels.

#### **9) SOFTWARE RETIREMENT**

- a) Unless otherwise provided in the Vendor's standard agreement, Vendor retains the right to retire a version of the Software and stop providing Maintenance, Updates or Services, upon providing one-hundred and eighty (180) days written notice to the State of its intent to do so. The decision to stop maintaining a version of the Software is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Software provided to the State and if the State has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, a newer version of the Software that supports substantially the same functionality as the licensed version of the Software. Newer versions of the Software containing substantially increased functionality will be made available to the State for an additional fee.
- b) Vendor may, at no additional charge, modify Software to improve operation and reliability or to meet legal requirements.
- c) Relocation of Software is the State's responsibility and may result in additional support charges and modified service response times. Software moved to another State facility or Agency may continue to be serviced subject to availability of a Vendor authorized support provider.
- d) Vendor is not required to provide support for non-qualified Software, nor Software not supplied under this Agreement. "Non-Qualified Software" is Software not supplied or approved by Vendor, and Software for which the State does not allow Vendor to incorporate modifications. The State is responsible for removing non-qualified Software to allow Vendor to perform Support Services.
- e) Support does not cover any damage or failure cause by:
  - i) Media and supplies or use of items not designed or designated for use with Software; or
  - ii) Site conditions that do not conform to Vendor's previously established site specifications; or

- iii) Neglect, improper use, fire or water damage, electrical disturbance, transportation by the State, work or modification by persons other than Vendor personnel, or other authorized parties.

The State is responsible for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs.

- 10) **TRANSPORTATION:** Transportation charges for software shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.
- 11) **TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.
- 12) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 09 NCAC 06B.1207, or other provision of law.
- 13) **AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Products and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 14) **PAYMENT TERMS:** The total License Fee and the Support Service or Maintenance Fee (if applicable and provided the State subscribes or purchases such Services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent contract years, if any, will be invoiced annually sixty (60) days prior to the anniversary date beginning each subsequent year. Increases in pricing for Support Services or Maintenance shall not exceed five percent (5%) per year following the first Contract year. Payment terms for software are Net 30 days after receipt of correct invoice or acceptance of software, whichever is later. Payment terms for Services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card.
- 15) **ACCEPTANCE CRITERIA:** Acceptance testing is required for all Vendor supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure

compliance with the State's specifications and Vendor's technical representations. Acceptance of software or Services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of Software or Services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following installation of any software deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.

- 16) CONFIDENTIALITY:** The State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate information, Products, software or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. G.S. §132-9 or other applicable law.
- 17) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.
- 18) ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 19) NOTICES:** Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.
- 20) TITLES AND HEADINGS:** Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 21) AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.



**22) TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.

**23) GOVERNING LAWS, JURISDICTION, AND VENUE**

- a) This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
- b) Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Agreement. To the extent the Agreement entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

**24) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

**25) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**26) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**27) TERMINATION:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

- a) The parties may mutually terminate this Contract by written agreement at any time.

b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 24), (Default) or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following

- i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7) (Limitation of Liability). The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
- ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

**28) DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**29) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

**30) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

**31) ELECTRONIC PROCUREMENT: (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

- a) **The successful vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or

charges to the Vendor for the Services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

- b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.
- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

## **ATTACHMENT A: REFERENCES**

The Vendor shall provide **three (3)** references of customers utilizing the proposed solution fully implemented in a setting similar to this solicitation's scope of work. References within like North Carolina communities / industries are encouraged.

The Vendor should have implemented the respective proposed service within the last **three (3)** years. Customer references whose business processes and data needs are similar to those performed by the Agency needing this solution in terms of functionality, complexity, and transaction volume are encouraged.

For each reference, the Vendor shall provide the following information:

- a. Customer name.
- b. Customer address.
- c. Current telephone number of a customer employee most familiar with the offered solution implementation.
- d. Customer email address
- e. Time period over which each offered solution implementation was completed.
- f. Brief summary of the offered solution implementation.
- g. List of offered solution products installed and operational.
- h. Number of vendor or technical staff supporting, maintaining and managing the offered solution
- i. Number of end users supported by the offered solution.
- j. Number of sites supported by the offered solution.