



Attachment A

RFP TERMS AND CONDITIONS

This RFP and Offeror's participation therein is subject to the following terms and conditions:

I. DEFINITIONS

- A. Award** means the identification of Offerors eligible to execute a Master Agreement following completion of the Multistate Sourcing Team's evaluation.
- B. Confidential Information** means any and all information in any form that is marked as confidential or would by its nature be deemed confidential and is obtained by Offeror in connection with this RFP, including but not limited to the data or records of the Lead State, the Multistate Sourcing Team, NASPO, or NASPO ValuePoint.
- C. Contractor** means an Offeror with whom the Lead State executes a Master Agreement resulting from this RFP.
- D. Day** means a calendar day, unless otherwise indicated.
- E. Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.
- F. Interested State** means a state that has requested to be identified as a potential Participating Entity in this RFP.
- G. Lead State** means the State issuing this RFP.
- H. Master Agreement** means a contract, resulting from this RFP, that is executed by and between a successful Offeror and the Lead State, acting in collaboration with NASPO ValuePoint.
- I. Multistate Sourcing Team** means the group of individuals assisting the Lead State with solicitation and contracting activities, which may include but are not limited to development of this RFP, evaluation of proposals, negotiation of Master Agreements, and evaluation of Contractor performance.
- J. NASPO** means the National Association of State Procurement Officials.
- K. NASPO ValuePoint** means the cooperative contracting division of NASPO.
- L. Offeror** means an entity or individual submitting a proposal in response to this RFP.
- M. Order** means a purchase order, sales order, agreement, or other document used by a Purchasing Entity to commit funds in exchange for a Contractor's delivery of one or more Deliverables.
- N. Participating Addendum** means a contract, referencing a Master Agreement, that is executed by and between a Contractor and a Participating Entity and may include Participating Entity-specific requirements and terms.
- O. Participating Entity** means a state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
- P. Proposal** means the document(s), data, information, and other media submitted by an Offeror in response to this RFP, including information submitted directly through the RFP eProcurement System and information submitted after the RFP Close Date at the request of the Lead State.



- Q. Purchasing Entity** means a state, or another entity authorized to use a Participating Addendum, that issues an Order under a Master Agreement resulting from this RFP through a Participating Entity's Participating Addendum.
- R. RFP** means this request for proposals, including all attachments and exhibits and any information posted by the Lead State to the RFP eProcurement System, as amended.
- S. RFP Close Date** means the date and time identified in In the RFP Overview and when proposal submittal is due.
- T. RFP Contact** means the individual identified in In the RFP Overview.
- U. RFP Release Date** means the date and time identified in In the RFP Overview and when the solicitation is published and available for viewing.
- V. RFP Q&A Deadline** means the date and time identified in In the RFP Overview.
- W. RFP eProcurement System** means North Carolina's eProcurement electronic Vendor Portal eVP identified in the RFP Overview.

II. GOVERNING LAW AND VENUE

- A.** This RFP and Offeror's participation in it is governed by and construed in accordance with the laws of the Lead State.
- B.** This procurement is conducted by the Lead State, Department of Administration (DOA) Division of Purchase & Contract (P&C), in accordance with the Lead State Procurement Code. Information about DOA and its governing laws are available at <https://www.doa.nc.gov/divisions/purchase-contract>. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in State of North Carolina. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in the NASPO ValuePoint Sample Master Agreement Terms and Conditions in Attachment D.
- C.** Unless otherwise specified in this RFP, the venue for any protest, claim, dispute, or action relating to this RFP, including evaluation and award, is in the state serving as the Lead State.
- D.** Any claim relating to this RFP brought in a federal forum must be brought and adjudicated solely and exclusively within the United States District Court for the Lead State.
- E.** Offeror and Offeror's participation in this RFP must comply with all applicable federal, state, and local laws, rules, and policies.
- F.** All Deliverables proposed by Offeror must comply with all applicable federal, state, and local laws, rules, and policies.

III. RFP DOCUMENTS

A. RFP eProcurement System.

- 1. The RFP eProcurement System is the sole source for official RFP documents and updates. The Lead State may, but is under no obligation to, notify Offeror of updates to the RFP eProcurement System, including the posting of RFP addenda.
- 2. Documents from this RFP may be posted on multiple websites, including non-Lead State procurement solicitation boards and the NASPO ValuePoint website, or distributed



through other channels, such as email. Such distribution is for advertising and informational purposes only, and documents and information from sources other than the RFP eProcurement System should not be relied upon to develop or submit a proposal. Proposals or questions submitted through any means other than those specified in this RFP will not be addressed or considered by the Lead State.

B. RFP Addenda.

1. The Lead State may, at any time and in its sole discretion, issue one (1) or more addenda to this RFP. Information shared orally or in informal communications will not be considered an amendment unless explicitly stated in the communication or documented in writing on the RFP eProcurement System.
2. Offerors may, through the process described in this RFP for asking questions, propose amendments to the RFP, including adjustment of deadlines. The Lead State is not obligated to consider any proposed addenda.
3. The Lead State may extend any deadline given to Offerors during the RFP process, including the RFP Close Date and RFP Q&A Deadline.
4. The Lead State may make immaterial corrections or clarifications to the RFP.
5. Offeror is wholly responsible for reviewing addenda and updates to the RFP eProcurement System, acknowledging amendments as required, and submitting a proposal that is responsive to and compliant with the RFP as amended.

C. Waiver.

1. The Lead State may waive any requirement in this RFP if the Lead State determines that waiver is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. Waiver of a requirement will not be construed as waiver of any other requirement in this RFP.
3. The Lead State may waive minor irregularities or defects in an Offeror's proposal.

D. Conflicts and Issues.

1. The following should be brought to the attention of the Lead State using the process described in this RFP for asking questions or initially seeking an informal resolution to any concern to the procurement officer in the solicitation:
 - a. Any alleged conflict among the materials composing this RFP; and
 - b. Any alleged issue relating to the content of this RFP, including instructions, requirements, or specifications alleged to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful.
2. If a concern or issue cannot be resolved by the process set forth in Subsection 1, Offeror may file a protest after contract award, using the process described in Attachment F, Protest Information.



IV. PROPOSALS

- A. Late Delivery or Non-delivery of Proposal.** Offeror is wholly responsible for ensuring Offeror's proposal is complete and submitted timely to the Lead State in the format required by this RFP. The Lead State will not accept a proposal after the RFP Close Date and Time.
- B. Modified and Alternate Proposals.** Offeror is expected to submit Offeror's most favorable terms and pricing in its original proposal submitted by the RFP Close Date. The Lead State is under no obligation to provide Offeror an opportunity to modify or submit an addendum to Offeror's original proposal or to submit another proposal, including a best and final offer, prior to final evaluation and award. Alternate or multiple proposals will not be accepted unless otherwise specified in this RFP.
- C. Discussions, Clarifications, and Demonstrations.** The Lead State may, but is not obligated to, enter into discussions with or request clarifications or demonstrations from one or more Offerors prior to awarding a Master Agreement. Offerors are expected to be ready to participate in discussions, clarifications, or demonstrations with limited notice. If discussions, clarifications, and demonstrations are held, it must be consistent with Offeror's original proposal and will not be part of the original offer. In order for additional information to be included as part of an award, priority-listed Offerors will be invited to submit a best and final offer, which shall be evaluated based on the evaluation criteria set forth in the RFP.
- D. Labor Categories Price Worksheet.**
1. Offeror must complete all required elements of Attachment I, Labor Categories Price Worksheet. The format and structure of the Worksheet is intended to allow for a fair evaluation of like pricing among Offerors. Deviation from the format or structure of the Labor Categories Price Worksheet may result in Offeror's proposal being deemed non-responsive.
 2. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Labor Categories Price Worksheet are accurate, even if formulas have been provided by the Lead State as a courtesy.
 3. Offeror's proposed prices must be inclusive of all fees and charges, including but not limited to fees or charges for shipping, delivery, credit card payments, and personnel. All costs proposed by Offeror must also be inclusive of the NASPO ValuePoint administrative fee. Proposed prices incorporated into a Master Agreement resulting from this RFP represent not-to-exceed pricing and minimum discounts, where applicable. Except as permitted by Subsection 4, pricing offered to Participating Entities and Purchasing Entities must be no higher than pricing set forth in the Master Agreement.
 4. A Participating Addendum may also require payment of an additional administrative fee by Contractors to a Participating Entity based on sales to Purchasing Entities within the jurisdiction of the Participating Entity. Unless otherwise negotiated by the Participating Entity, Contractor may adjust the Master Agreement pricing incorporated into the Participating Entity's Participating Addendum by an amount not to exceed the Participating Entity's fee. Such adjustments will have no effect on the NASPO ValuePoint administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the jurisdiction of the Participating Entity.



E. Proposed Modifications to the Sample Master Agreement

1. The Lead State may, but is not obligated to, consider proposed modifications to Attachment D, Sample Master Agreement. Provisions of the Sample Master Agreement that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead State using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead State.
2. Offeror-specific modifications to Attachment D, Sample Master Agreement, may be proposed as part of Offeror's proposal but are strongly discouraged. The quantity, breadth, and nature of modifications proposed by Offeror may be considered in the Lead State's evaluation of Offeror's proposal and of its risks, costs, and benefits to the Lead State and potential Participating Entities and Purchasing Entities. Proposing excessive or overly restrictive modifications, or proposing modifications upon which Offeror's proposal is conditioned, may result in Offeror's proposal being deemed non-responsive.
3. The Lead State will not consider any proposed modification that:
 - a. Is not submitted with Offeror's proposal;
 - b. Is not accompanied by an explanation;
 - c. Is not reflected in redlined edits to the Sample Master Agreement and submitted with Offeror's proposal;
 - d. Merely references another document or a URL; or
 - e. Modifies the NASPO ValuePoint administrative fee.
4. Offerors may propose additional terms but must include them in the redlines to the Sample Master Agreement and must clearly identify where any terms conflict with the Sample Master Agreement.
5. If Offeror is awarded a Master Agreement resulting from this RFP, a comparison of Attachment D, Sample Master Agreement and Offeror's accepted modifications thereto may be posted on the NASPO ValuePoint website for examination by potential Participating Entities and Purchasing Entities

F. Proposal Contact

1. The Proposal Contact identified by Offeror in Attachment G, Offeror Information, Acknowledgements, and Certifications must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact. Offeror is wholly responsible for ensuring communications received by Offeror's Proposal Contact are reviewed and addressed timely by the appropriate personnel.
2. The Lead State may, but is under no obligation to, notify Offeror's Proposal Contact of updates to the RFP eProcurement System, including the posting of RFP amendments. Offeror is wholly responsible for reviewing updates and submitting a proposal that is responsive to and compliant with the RFP as amended.



- G. Each Offeror to Bear its Own Costs.** Each Offeror shall be responsible for all costs incurred by it prior to the Notice of Award, including, without limitation, its costs of preparing and submitting its Offer, responding to notices or requests, making Priority-Listed Offeror presentations, demonstrations and discussions, and otherwise participating in the RFP Process.
- H. Firm Offer.** Offeror's proposal will act as a firm offer for 180 days following the RFP Close Date. After 180 days, the offer will remain open unless revoked by Offeror via written withdrawal of Offeror's proposal.
- I. Ownership and Disclosure of Proposals.**
1. All proposals and tangible items submitted by Offeror in connection with this RFP, including physical media and product samples, will become the property of the Lead State and may not be returned to Offeror. The RFP, any addenda issued, and the successful Offerors' proposal shall become a part of the contract.
 2. Offeror grants Lead State and NASPO a perpetual, irrevocable, non-exclusive, royalty-free, and transferable right to display, modify, copy, and otherwise use the contents of Offeror's proposal, which may be:
 1. Shared with NASPO members;
 2. Shared with entities represented on the Multistate Sourcing Team;
 3. Posted to the NASPO ValuePoint website following execution of Master Agreements for examination by potential Participating Entities and Purchasing Entities;
 4. Subject to disclosure in accordance with applicable public information laws, rules, and policies; and
 5. Subject to retention, archiving, and destruction in accordance with applicable retention laws, rules, and policies.
 3. If Offeror is claiming any portion of its proposal as confidential, proprietary, or protected, Offeror must complete the required sections of Attachment J, Claim of Business Confidentiality, and submit with Offeror's proposal a redacted copy of Offeror's proposal, which must be clearly marked as such. Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected. Submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. If Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.
- J. Confidential Information.** If Offeror is provided or given access to Confidential Information in connection with this RFP, Offeror will keep the Confidential Information in confidence and will not use the Confidential Information for any purpose other than as directed by the Lead State and as necessary to respond to this RFP. Unless otherwise directed by the Lead State, Offeror will destroy



Confidential Information within 30 days of the cancellation of this RFP, rejection or withdrawal of Offeror's proposal, or execution of a Master Agreement between the Lead State and Offeror.

- K. Required Signatures.** Offeror's failure to have an authorized representative sign any document or attachment requiring a signature, including electronic signatures or certifications, shall result in rejection of the proposal by the Lead State.
- L. NASPO ValuePoint eMarketPlace.** Participation in the NASPO ValuePoint eMarketPlace by Offerors awarded a Master Agreement resulting from this RFP is **mandatory**. By submitting a proposal, Offeror agrees to comply with the requirements, terms, and conditions related to the NASPO ValuePoint eMarketPlace set forth in Attachment D, Sample Master Agreement.

V. RIGHTS RESERVED TO THE LEAD STATE

A. RFP Contact and Multistate Sourcing Team.

1. The Lead State may change the RFP Contact at any time. The Lead State will notify potential Offerors of the change via an amendment to this RFP, an email to the Offeror's Proposal Contact, or an update to the RFP eProcurement System.
2. The Lead State is not required to disclose the composition of the Multistate Sourcing Team and may, at any time and without notice, change the composition of the Multistate Sourcing Team, provided the composition complies with the Lead State's laws, rules, and policies.

- B. Consideration of External Information.** The Lead State and Multistate Sourcing Team may consult external sources and consider external information to confirm the responsibility of Offeror, the responsiveness of Offeror's proposal, and the veracity of any representation made by Offeror. Offeror will be given a reasonable opportunity to respond to any external information obtained by the Lead State and Multistate Sourcing Team that materially and negatively affects evaluation of Offeror's proposal. External information does not include information obtained from references provided by Offeror.

- C. Rejection of Proposals.** The Lead State may reject Offeror's proposal at any time if the Lead State determines that:

1. The proposal is non-responsive pursuant to the RFP;
2. The proposal has failed to meet any mandatory requirement of the RFP, including any minimum scoring threshold;
3. Offeror is not responsible; or
4. Offeror has committed a violation of procurement law, rule, or policy.

D. Cancellation.

1. The Lead State may cancel this RFP at any time if the Lead State determines that cancellation is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. Following cancellation, the Lead State may, at its discretion, re-issue this RFP or issue another RFP for the same or similar Deliverables.



E. Transfer.

1. The Lead State may transfer this RFP to a new Lead State if the Lead State determines that such transfer is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. The Lead State will notify all Offerors of a pending transfer and specify a date, prior to the transfer being made effective, before which Offerors may withdraw a submitted proposal. A proposal submitted to the Lead State and not withdrawn by Offeror prior to a transfer may, at the discretion of the Lead State, be destroyed, returned to Offeror, or shared with the new Lead State for completion of the procurement process in accordance with the laws, rules, policies, and processes of the new Lead State.
3. Upon the effective date of a transfer, all references to "Lead State" in this RFP will refer to the new Lead State. The new Lead State may, at its discretion, amend this RFP in whole or in part and may, at its discretion, allow Offerors to amend submitted proposals or allow additional Offerors to submit proposals following transfer of this RFP

F. No Exclusivity.

1. Master Agreements resulting from this RFP will be established solely for the convenience of Participating Entities. The Lead State, Participating Entities, and Purchasing Entities reserve the right to obtain the same or similar Deliverables from other sources when in their best interest and permitted by applicable law, rule, or policy.
2. The Lead State may, at its discretion, issue a supplemental solicitation during the term of a Master Agreement resulting from this RFP if the Lead State determines that:
 - a. There is insufficient competition among Contractors awarded a Master Agreement resulting from this RFP;
 - b. The quantity or diversity of Deliverables available through Master Agreements resulting from this RFP is insufficient to meet demand; or
 - c. Changes in the industry, market, or technology justify the solicitation of new or supplemental Contractors or Deliverables.

G. Mandatory State Preferences.

The Lead State may apply mandatory evaluation preferences to proposals of eligible Offerors as set forth in applicable laws, rules, policies, or provisions of this RFP. Offeror is wholly responsible for demonstrating eligibility for any applicable preference in Offeror's proposal, including identification of applicable Business Certifications in Attachment G, Offeror Information, Acknowledgements, and Certifications. Offerors that meet the requirements for award with an applied preference but would not receive an award without an applied preference may be awarded a contract for use by the Lead State but will not be awarded a NASPO ValuePoint Master Agreement for use by other states and eligible entities.

H. Final Approval of Awards.

1. Award and execution of a NASPO ValuePoint Master Agreement by the Lead State is conditioned upon the following:
 - a. Approval by NASPO ValuePoint;



3. Some Interested States have also provided state-specific terms and conditions that may apply to a Participating Addendum executed with an Offeror awarded a Master Agreement through this RFP. Any terms and conditions included in Attachment E, Participation Information are being provided for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

B. Participating Entities.

1. If not proscribed by law or by the Chief Procurement Official of the state in which the entity is located, an entity may be eligible to execute a Participating Addendum directly with a Contractor. Such entities may include:
 - a. Political subdivisions, public agencies, and service districts;
 - b. Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;
 - c. Federally recognized tribes;
 - d. Quasi-governmental entities; and
 - e. Eligible non-profit organizations.
2. Prior to execution of a Participating Addendum with an entity described above, a Contractor must coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

- C. Purchasing Entities.** Entities eligible to make purchases from a Participating Addendum will be identified by the Participating Entity in the Participating Addendum.

- D. Potential Participation by Canadian Entities.** In addition to potential Participating Entities within the United States, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use a Master Agreement resulting from this RFP, with the approval of the Contractor.

VII. NORTH CAROLINA INSTRUCTIONS TO VENDORS

A. READ, REVIEW AND COMPLY

It shall be the Vendor's responsibility to read this entire document; review all enclosures, attachments, and any Addenda; and comply with all requirements specified, whether appearing in these Instructions to Vendors or elsewhere in the Solicitation document.



Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.

B. REQUEST FOR OFFERS

Vendors are cautioned that this is a request for Offers, not an offer or request to contract, and the Lead State reserves the unqualified right to reject any and all bids at any time if such rejection is deemed to be in the best interest of the Lead State. By submitting Your Bid or Proposal, You are offering to enter into a contract with the Lead State. The Contract is a separate document that represents the Vendor's and the Lead State's entire agreement. If Your bid is accepted and results in a Contract, You will be expected to accept the Master Agreement Terms And Conditions included in the Solicitation document as part of the Contract. Depending upon the good or service being offered, other terms and conditions may apply.

C. DUTY TO INQUIRE

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation for any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by Addendum. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the Lead State's attention.

D. DEFINITIONS, ACRONYMS AND ABBREVIATIONS

The following definitions, acronyms, and abbreviations may be used within the Solicitation document.

1. **ADDENDUM:** a document issued to supplement or modify the original Solicitation document. Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope changes to the Solicitation.
2. **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the Lead State.
3. **BUYER:** The employee of the Lead State, Participating Entity, Purchasing Entity, or Other Eligible Entity that places an order with the Vendor.
4. **CONTRACT:** A contract resulting from or arising out of Vendor responses to this Solicitation.
5. **CONTRACT ADMINISTRATOR:** A representative of the Lead State who is responsible for the functions that are performed after all parties have signed a contract, including any modifications to the contract.
6. **CONTRACT MANAGER:** A representative of the Lead State or awarded vendor who ensures compliance with the contract terms and conditions while giving attention to the achievement of the stated output and outcome of the contract.
7. **Electronic Vendor Portal (eVP):** System for vendors to do business with the State of North Carolina, including registering to do business, responding to bid opportunities, and certifying as a HUB and/or NCSBE



8. **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the Lead State conducts electronic procurement.
9. **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns the commodity in transit and files any claims. Vendor pays all freight and any related transportation charges. A Solicitation may request that a Vendor separately identify freight charges in its bid, but no amount or charge not included as part of the total bid price will be paid.
10. **HUB:** Historically Underutilized Business <https://ncadmin.nc.gov/businesses/hub>
11. **LOT:** A grouping of similar products within this Solicitation document.
12. **OFFER:** the bid or proposal submitted in response this Solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
13. **OFFEROR:** Defined at the top of the document.
14. **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
15. **PROCUREMENT LEAD:** Representative of the Lead State identified in the document RFP Overview, Section III.A who will correspond with potential Vendors concerning Solicitation issues, will contract with the Vendor providing the best offer to the State, and is the individual who will administer the Contract for the Lead State.
16. **QUALIFIED BID/PROPOSAL:** A responsive bid submitted by a responsible Vendor.
17. **RESPONSIBLE:** Refers to a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
18. **RESPONSIVE:** Refers to an Offer that conforms to the Requirements of the Solicitation in all respects to be considered by the Lead State for award.
19. **RFP:** Defined at the top of this document.
20. **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
21. **STATE AGENCY:** Any executive branch of the State, including its departments, institutions, boards, commissions, universities, and units of the State.
22. **STATE DEPARTMENTS:** State Department includes but is not limited to the Department of Administration, Department of Agriculture and Consumer Services, Department of Commerce, Department of Natural and Cultural Resources, Department of Environmental Quality, Department of Health and Human Services, Department of Information Technology, Department of Insurance, Department of Justice, Department of Labor, Department of Military and Veteran Affairs, Department of Public Instruction, Department of Public Safety, Department of Revenue, Department of State Treasurer, Office of the Secretary of the State, Department of Transportation, Wildlife Resources Commission, Office of Budget and Management, Office of the Governor, Office of the Lieutenant Governor, Office of The State Auditor, Office of the State Controller.
23. **VENDOR:** See definition of "Offeror" at the top of this document.



24. WORK: All labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

25. YOU and YOUR: Offeror.

E. INTERPRETATION OF TERMS AND PHRASES

The Solicitation document serves to advise potential Vendors of the parameters of the solution being sought by the Lead State. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether bids should be evaluated or rejected, the Lead State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the Lead State's needs as described in the Solicitation. Except as specifically stated in the Solicitation, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement, if determined to be essential under the circumstances then existing, may result in the Lead State exercising its discretion to reject a bid in its entirety.

F. BID SUBMISSION

- 1. VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its bid the name, address, and telephone number of the person(s) with authority to bind the Vendor and answer questions or provide clarification concerning the Vendor's bid.
- 2. SIGNING YOUR OFFER:** Every Offer must be signed by an individual with actual authority to bind the Offeror.
 - a. If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm.
 - b. If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner.
 - c. If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign.
 - d. An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant.
 - e. If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.
- 3. EXECUTION:** Failure to sign the Attachment L North Carolina Execution Page (also page 1 of Attachment D Sample Master Agreement)) in the indicated space may render an Offer nonresponsive, and it may be rejected.
- 4. STATE OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal government processes so that Offers cannot be received at the Lead State office designated for receipt of bids by



the exact time specified in the Solicitation, the time specified for receipt of Offers will be deemed to be extended to the same time of day specified in the Solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Addendum may be issued to reschedule the bid opening. If Lead State offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Addendum will be issued to reschedule the conference.

5. **BID IN ENGLISH and DOLLARS:** Offers submitted in response to this Solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.
6. **LATE BIDS:** Late bids, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.
 - a. Vendor shall bear the risk for late submission due to unintended or unanticipated delay—whether submitted electronically, delivered by hand, U.S. Postal Service, courier or other delivery service. It is the Vendor's sole responsibility to ensure that its bid has been received by this Office by the specified time and date of opening. The date and time of submission will be marked on each bid when received, and any bid received after the bid submission deadline will be rejected.
7. **DETERMINATION OF RESPONSIVENESS:** Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the Lead State, Participating Entity, or Purchasing Entity cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer.
8. **CONTENTS OF OFFER:**
 - a. Offers should be complete and carefully worded and should convey all of the information requested.
 - b. Offers should be prepared simply and economically, providing a straightforward, concise description of the Offeror's capabilities to satisfy the requirements of the Solicitation. Emphasis should be on completeness and clarity of content.
 - c. If Your Offer includes any comment over and above the specific information requested in the Solicitation, you are to include this information as a separate appendix to Your Offer. Offers which include either modifications to any of the Solicitation's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award at the Lead State discretion.
9. **MULTIPLE OFFERS.** If specifically stated in the Solicitation document, Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements.



- 10. CLARIFICATION:** The Lead State may elect to communicate with You after bid opening for the purpose of clarifying either Your Offer or the requirements of the Solicitation. Such communications may be conducted only with Offerors who have submitted an Offer which obviously conforms in all material aspects to the Solicitation. Clarification of an Offer must be documented in writing and included with the Offer. Clarifications may not be used to revise an Offer or the Solicitation.
- 11. ACCEPTANCE AND REJECTION:** The Lead State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. 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. Regardless of error or omission, a Vendor shall not be permitted to increase its pricing after the deadline for submitting bids.
- 12. BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, the Lead 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 requirements or intent of this Solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to the Lead State, cancellation or other changes in the intended project or any 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 Lead State.
- 13. INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested in the Solicitation document. Further, if required elsewhere in this bid, each Vendor shall submit with its bid any sketches, descriptive literature, and/or complete specifications covering the goods and services offered. Reference to literature submitted with a previous bid or available elsewhere will not satisfy this provision. Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the Solicitation. Failure comply with these requirements shall constitute sufficient cause to reject a bid without further consideration.
- 14. WITHDRAWAL OF BID OR PROPOSAL:** Proposals submitted electronically may be withdrawn at any time prior to the date for bid opening identified on the cover page of this Solicitation document (or such later date included in an Addendum). Proposals that have been delivered by hand, U.S. Postal Service, courier, or other delivery service may be withdrawn only in writing and if receipt is acknowledged by the office issuing the Solicitation document prior to the time for opening identified on the cover page of the Solicitation document (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after bid opening shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.
- 15. COST FOR BID OR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting Offers are the Vendor's sole responsibility.
- 16. INSPECTION AT VENDOR'S SITE:** The Lead State reserves the right to inspect, at a reasonable time, the equipment, item, plant, or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the Lead State's determination that such equipment, item,



plant, or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

- 17. RECYCLING AND SOURCEREDUCTION:** It is the policy of the Lead State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
- 18. CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of Contract award, each out-of-State Vendor that is a corporation, limited-liability company, or limited-liability partnership shall have received, and shall maintain throughout the term of The Master Agreement, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business. Offerors should note that this condition is only applicable to contract awardees who execute a Participating Addendum (PA) with the State of North Carolina.
- 19. SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit Your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:

 - a. If paper copies are requested, all copies of the bid are printed double sided. All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
 - b. Unless absolutely necessary, all bids and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - c. Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
- 20. HISTORICALLYUNDERUTILIZEDBUSINESSES(HUB):** The Lead State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the Lead State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts. While the Lead State encourages the



participation of HUB Vendors, HUB status will not be considered as a factor for evaluating and awarding contracts.

21. RECIPROCAL PREFERENCE: Reserved.

22. INELIGIBLE VENDORS: As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State:

- a. any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and
- b. any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81.

A contract with the Lead State or any of its political subdivisions by any company identified in a) or b) above shall be void ab initio.

23. VALID TAXPAYER INFORMATION: All persons or entities desiring to do business with the Lead State must provide correct taxpayer information on North Carolina specified forms. The substitute W-9 and instructions are here: <https://www.osc.nc.gov/state-north-carolina-sub-w-9/open>

24. VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities available as well as notifications of status changes to those Solicitations. Online registration and other purchasing information is available at the following website: <https://evp.nc.gov>.

25. The status of a Vendor's E-Procurement Services account(s) shall be considered a relevant factor in determining whether to approve the award of a Contract resulting from this Solicitation document. Any Vendor with an E-Procurement Services account that is in arrears by 91 days or more at the time of bid opening may be suspended or deactivated, at the State's discretion, and may be disqualified from further evaluation or consideration.

26. TABULATIONS: Bid tabulations can be electronically retrieved at the Electronic Vendor Portal (eVP), <https://evp.nc.gov>. Tabulations will normally be available at this web site not later than one working day after the bid opening. If negotiation is anticipated under 01 NCAC 05B.0503, pricing may not be public until award. Lengthy or complex tabulations may be summarized, with other details not made available on eVP. Requests for additional details or information concerning such tabulations cannot be honored.

27. CONFIDENTIAL INFORMATION: To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in bids that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined



in accordance with G.S. 132-1.2. Any material labeled confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.

- 28. COMMUNICATIONS BY VENDORS:** In submitting its bid, the Vendor agrees not to discuss or otherwise reveal the contents of its bid to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this Solicitation. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the Lead State concerning the Solicitation, during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the Lead State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the Solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's bid and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this Solicitation. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the using agency or issuing agency authorized by this Solicitation are permitted.
- 29. INFORMAL COMMENTS:** The Lead State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the Lead State during the competitive process or after award. The Lead State is bound only by information provided in writing in this Solicitation document and in formal Addenda.
- 30. PROTEST PROCEDURES:** See Attachment F Protest Information.
- 31. ORDER OF PRECEDENCE:** See Attachment D Master Agreement Terms and Conditions.
- 32. ADDENDA:** Critical updated information may be included in Addenda to the Solicitation. It is important that all Vendors bidding on the Solicitation periodically check for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in the Solicitation document and all Addenda thereto. Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued concerning the Solicitation.
- 33. ORAL EXPLANATIONS NON-BINDING:** Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a Solicitation will be furnished promptly to all other prospective Offerors as an Addendum to the Solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. See clause herein entitled "Duty to Inquire." The Lead State will not identify You in its answer to Your question.
- 34. MAXIMUM COMPETITION:** The Lead State seeks to permit the maximum practicable competition. Offerors are urged to advise the Lead State, as soon as possible, regarding any aspect of this



procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. If the Lead State determines that any changes will be made resulting from the questions asked, then such decisions will be communicated in the form of an Addendum.

- 35. FIRM OFFER:** Vendor's bid shall constitute a firm offer. By execution and delivery of a bid in response to a Solicitation, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposefully or inadvertently, shall have no force or effect, and will be disregarded. Any bid that contains language that indicates the bid is non-binding or subject to further negotiation before a contractual document may be signed shall be rejected.