

STATE OF NORTH CAROLINA

Asheville-Buncombe Technical Community College

Invitation for Bid #: 77-0001341

Continuing Education Schedule Fall, Winter, Spring/Summer

Date of Issue: May 15, 2025

Bid Opening Date: June 10, 2025 @ 2:00PM

On June 10, 2025 @ 3:00PM ET

Direct all inquiries concerning this IFB to:

Carmalita Fortenberry

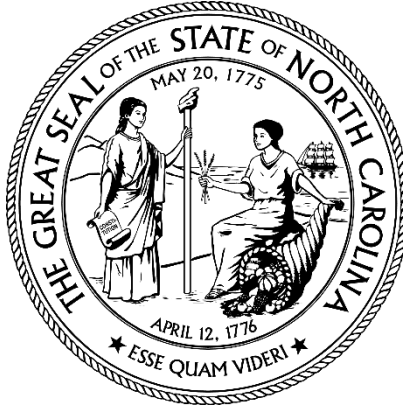
Purchasing Agent

Email: carmalitafortenberry@abtech.edu

Phone: 828-398-7151

Bid Number: 77-0001341

Vendor: _____



STATE OF NORTH CAROLINA

Invitation for Bid

77-0001341

For internal State agency processing, including tabulation of bids, provide your company's eVP (Electronic Vendor Portal) Number. Pursuant to G.S. 132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential**, before the procurement file is made available for public inspection.

**This page shall be filled out and returned with your bid.
Failure to do so may subject your bid to rejection.**

Vendor Name

Vendor eVP#

Note: For a contract to be awarded to you, your company (you) must be a North Carolina registered vendor in good standing. You must enter the vendor number assigned through eVP (Electronic Vendor Portal). If you do not have a vendor number, register at <https://vendor.ncgov.com/vendor/login>

Sealed, mailed responses ONLY will be accepted for this solicitation.

STATE OF NORTH CAROLINA Asheville-Buncombe Technical Community College	
Refer <u>ALL</u> Inquiries regarding this IFB to: Carmalita Fortenberry, Purchasing Agent <u>carmalitafortenberry@abtech.edu</u>	Invitation for Bid #: 77-0001341
	Bids will be publicly opened: June 10, 2025 @ 3:00PM Asheville-Buncombe Technical Community College 340 Victoria Road Asheville, NC 28801
Using Agency: Continuing Education Department	Commodity No. and Description: 91571 Advertising Newspaper and Publication Advertising

EXECUTION

In compliance with this Invitation for Bid (IFB), and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein.

By executing this bid, the undersigned Vendor understands that false certification is a Class I felony and certifies that:

- this bid is submitted competitively and without collusion (G.S. 143-54),
- none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and
- it is not an ineligible Vendor as set forth in G.S. 143-59.1.

Furthermore, by executing this bid, the undersigned certifies to the best of Vendor's knowledge and belief, that:

- it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this IFB, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

As required by Executive Order 24 (2017), the undersigned vendor certifies will comply with all Federal and State requirements concerning fair employment and that it does not and will not discriminate, harass, or retaliate against any employee in connection with performance of any Contract arising from this solicitation.

G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public contracts; or awarding or administering public contracts; or inspecting or supervising delivery of the public contract of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of this response to the IFB, the undersigned certifies, for Vendor's entire organization and its employees or agents, that Vendor is not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

By executing this bid, Vendor certifies that it has read and agreed to the **INSTRUCTION TO VENDORS** and the **NORTH CAROLINA GENERAL TERMS AND CONDITIONS incorporated herein**. These documents can be accessed from the ATTACHMENTS page within this document.

Failure to execute/sign bid prior to submittal may render bid invalid and it MAY BE REJECTED. Late bids shall not be accepted.

COMPLETE/FORMAL NAME OF VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:

PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #21):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		FAX NUMBER:
VENDOR'S AUTHORIZED SIGNATURE*:	DATE:	EMAIL:

VALIDITY PERIOD

Offer shall be valid for at least sixty (90) days from date of bid opening, unless otherwise stated here: _____ days, or if extended by mutual agreement of the parties in writing. Any withdrawal of this offer shall be made in writing, effective upon receipt by the agency issuing this IFB.

ACCEPTANCE OF BIDS

If your bid is accepted, all provisions of this IFB, along with the written results of any negotiations, shall constitute the written agreement between the parties ("Contract"). The NORTH CAROLINA GENERAL TERMS AND CONDITIONS are incorporated herein and shall apply. Depending upon the Goods or Services being offered, other terms and conditions may apply, as mutually agreed.

<p><u>FOR STATE USE ONLY:</u> Offer accepted and Contract awarded this _____ day of _____, 20____, as indicated on</p> <p>The attached certification, by _____.</p> <p style="text-align: center;">(Authorized Representative of Asheville-Buncombe Technical Community College)</p>
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1.0 PURPOSE AND BACKGROUND

Asheville-Buncombe Technical Community College's (A-B Tech) is seeking qualified Vendors to establish an Agency Contract to provide professional printing services and distribute publications three times per year in August, December, and March in accordance with the specifications and scope of work herein. This is the primary print/direct mail piece for Asheville-Buncombe Technical Community College.

A-B Tech's Continuing Education department promotes the lifelong learning process by offering a wide range of programs and services that meet the needs and interests of adults, regardless of their educational background. Our Continuing Education department is a key component of recruitment and outreach targeting the service area of Buncombe and Madison counties. It is the primary channel for Continuing Education registration and contains information about our school and the courses offered.

The intent of this solicitation is to award an Agency Contract.

Bids shall be submitted in accordance with the terms and conditions of this IFB and any addenda issued hereto.

1.1 CONTRACT TERM

The Contract shall have an initial term of one (1) year, beginning on the date of final Contract execution (the "Effective Date"). The Vendor shall begin work under the Contract upon approval by the State Contract Manager.

At the end of the Contract's initial term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to two (2) additional one-year terms. The State will give the Vendor written notice of its intent to exercise each option no later than thirty (30) days before the end of the Contract's then-current term. In addition to any optional renewal terms, and with the Vendor's concurrence, the State reserves the right to extend the Contract after the last active term.

Bids shall be submitted in accordance with the terms and conditions of this IFB and any addenda issued hereto.

2.0 GENERAL INFORMATION

2.1 INVITATION FOR BID DOCUMENT

This IFB is comprised of the base IFB document, any attachments, and any addenda released before Contract award, which are incorporated herein by reference.

2.2 E-PROCUREMENT FEE

ATTENTION: The E-Procurement fee may apply to this solicitation. See the paragraph entitled ELECTRONIC PROCUREMENT of the North Carolina General Terms and Conditions.

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

2.3 NOTICE TO VENDORS REGARDING IFB TERMS AND CONDITIONS

It shall be the Vendor's responsibility to read the Instructions to Vendors, the North Carolina General Terms and Conditions, all relevant exhibits and attachments, and any other components made a part of this IFB and comply with all requirements and specifications herein. Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this IFB.

If Vendors have questions or issues regarding any component of this IFB, those must be submitted as questions in accordance with the instructions in the BID QUESTIONS Section. If the State determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an IFB addendum. The State may also elect to leave open the possibility for later negotiation of specific provisions of the Contract that have been addressed during the question-and-answer period, prior to contract award.

Other than through the process of negotiation under 01 NCAC 05B.0503, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's bid or otherwise. This applies to any language appearing in or attached to the document as part of the Vendor's bid that purports to vary any terms and conditions or Vendors' instructions herein or to render the bid non-binding or subject to further negotiation. Vendor's bid shall constitute a firm offer that shall be held open for the period required herein ("Validity Period" above).

The State may exercise its discretion to consider Vendor proposed modifications. By execution and delivery of this IFB Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded unless expressly agreed upon during negotiations and incorporated by way of a Best and Final Offer (BAFO). Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's bid as nonresponsive.

2.4 IFB SCHEDULE

The table below shows the *intended* schedule for this IFB. The State will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue IFB	State	May 15 2025
Submit Written Questions	Vendor	May 21, 2025
Provide Response to Questions	State	May 23, 2025
Submit Bids	Vendor	June 10, 2025 @ 2PM
Bid Opening	State	June 10, 2025 @ 3PM
Contract Award	State	Issue Date of Purchase Order

2.5 BID QUESTIONS

Upon review of the IFB documents, Vendors may have questions to clarify or interpret the IFB 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 IFB SCHEDULE Section above, unless modified by Addendum.

Written questions shall be emailed to carmalitafortenberry@abtech.edu by the date and time specified above. Vendors should enter "IFB # 77-0001341 Questions" as the subject for the email. Question submittals should include a reference to the applicable IFB section and be submitted in the format shown below:

Reference	Vendor Question
IFB Section, Page Number	Vendor question ...?

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 form of an addendum to the *electronic Vendor Portal (eVP)*, <https://evp.nc.gov>, and shall become an Addendum to this IFB. 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 IFB, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in the IFB and an addendum to this IFB.

2.6 BID SUBMITTAL

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 IFB by the specified time and date of opening. The time and date of receipt will be marked on each bid when received. Any bid or portion thereof received after the bid deadline will be rejected.

By Mail

Mailing address for delivery of bid via US Postal Service

BID NUMBER: 77-0001341
Asheville-Buncombe Technical Community College
Carmalita Fortenberry, Purchasing Agent
340 Victoria Rd.
Asheville, NC 28801

CAUTION: For bids submitted via U.S. mail, please note that the U.S. Postal Service generally does not deliver mail to a specified street address but to the State's Mail Service Center. Vendors are cautioned that bids sent via U.S. Mail, including Express Mail, may not be delivered by the Mail Service Center to the agency's purchasing office on the due date in time to meet the bid deadline. All Vendors are urged to take the possibility of delay into account when submitting bids by U.S. Postal Service, courier, or other delivery service. **Attempts to submit a bid via facsimile (FAX) machine, telephone, or email in response to this IFB shall NOT be accepted.**

- a) Submit a **signed, original executed** bid response, (1) un-redacted copies on CD, DVD or flash drive and, if required, (1) redacted (Proprietary and Confidential Information Excluded) copies on CD, DVD or flash drive of your bid simultaneously to the address identified in the table above.
- b) Submit your bid in a sealed package. Clearly mark each package with: (1) Vendor name; (2) the IFB number; and (3) the due date. Address the package(s) for delivery as shown in the table above. If Vendor is submitting more than one (1) bid, each bid shall be submitted in separate sealed envelopes and marked accordingly. For delivery purposes, separate sealed envelopes from a single Vendor may be included in the same outer package. Bids are subject to rejection unless submitted with the information above included on the outside of the sealed bid package.
- c) Copies of bid files must be provided on separate read-only CD's, DVD's or flash drives. File contents **shall NOT** be password protected but shall be in .PDF or .XLS format and shall be capable of being copied to other sources.
- d) If confidential and proprietary information is included in the bid, also submit one (1) signed, REDACTED copy of the bid. 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 bid with its bid submission, the Department may release an unredacted version if a record request is received.

Failure to submit a bid in strict accordance with these instructions shall constitute sufficient cause to reject a Vendor's bids(s). Vendors are strongly encouraged to allow sufficient time to upload bids.

Critical updated information may be included in Addenda to this IFB. It is important that all Vendors responding to this IFB periodically check the State's eVP website 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 this IFB and all Addenda thereto.

2.7 BID CONTENTS

Vendors shall populate all attachments of this IFB that require the Vendor to provide information and include an authorized signature where requested. Failure to provide all required items, or Vendor's submission of incomplete items, may result in the State rejecting Vendor's bid, in the State's sole discretion.

Vendor IFB responses shall include the following items and attachments, which shall be arranged in the following order:

- a) Cover Letter, which must a statement that confirms that the Vendor has read the IFB in its entirety, including all links, and all Addenda released in conjunction with the IFB
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Bid Number.
- c) Completed and signed version of all EXECUTION PAGES, along with the body of the IFB.
- d) Signed receipt pages of any addenda released in conjunction with this IFB, if required to be returned.
- e) Vendor's Response: Section 4.2 Delivery; Section 5.3 Deviations; 6.1 Contract Manager & Customer Service
- f) Completed version of ATTACHMENT A: PRICING FORM
- g) Completed version of ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION
- h) Completed version of ATTACHMENT E: CUSTOMER REFERENCE FORM
- i) Completed version of ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR
- j) Completed and signed version of ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION
- k) Completed and signed version of ATTACHMENT H: VENDOR REQUEST FOR EXECUTIVE ORDER #50 PRICE MATCHING form that confirms that a price matching opportunity is requested

3.0 METHOD OF AWARD AND BID EVALUATION PROCESS

3.1 METHOD OF AWARD

North Carolina G.S. 143-52 provides a general list of criteria the State shall use to award contracts, as supplemented by the additional criteria herein. The Goods or Services being procured shall dictate the application and order of criteria; however, all award decisions shall be in the State's best interest.

All responsive bids will be reviewed, and an award or awards will be based on the responsive bid(s) offering the lowest price that meets the specifications provided herein, to include any required verifications set out here in such as but not limited to past performance, current product samples, references, and financial documents.

While the intent of this IFB is to award a Contract(s) to a single Vendor, the State reserves the right to make separate awards to different Vendors for one or more line items, to not award one or more line items, or to cancel this IFB in its entirety without awarding a Contract, if it is considered to be most advantageous to the State to do so.

The State reserves the right to waive any minor informality or technicality in bids received.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

While this IFB is under evaluation, the responding Vendor, including any subcontractors and suppliers, is prohibited from engaging in conversations intended to influence the outcome of the evaluation. See Paragraph 29 of the Instructions to Vendors entitled COMMUNICATIONS BY VENDORS.

Each Vendor submitting a bid to this IFB, including its employees, agents, subcontractors, suppliers, subsidiaries and affiliates, is prohibited from having any communications with any person inside or outside the using agency; issuing agency; other government agency office or body (including the purchaser named above, any department secretary, agency head, members of the General Assembly and Governor's office); or private entity, if the communication refers to the content of Vendor's bid or qualifications, the content of another Vendor's proposal, another Vendor's qualifications or ability to perform a resulting contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals, the award of a contract, or both.

Any Vendor not in compliance with this provision shall be disqualified from evaluation and award. A Vendor's proposal may be disqualified if its subcontractor and/or supplier engage in any of the foregoing communications during the time that the procurement is active (*i.e.*, the issuance date of the procurement until the date of contract award or cancellation of the procurement). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this IFB or inquiries directed to the purchaser named in this IFB regarding requirements of the IFB (prior to proposal submission) or the status of the award (after submission) are excepted from this provision.

3.3 BID EVALUATION PROCESS

Only responsive submissions will be evaluated.

The State will conduct an evaluation of responsive Bids, as follows:

Bids will be received according to the method stated in the Bid Submittal section above.

All bids must be received by the issuing agency not later than the date and time specified in the IFB SCHEDULE Section above, unless modified by Addendum. Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the State.

At the date and time provided in the IFB SCHEDULE Section above, unless modified by Addendum, the bids from each responding Vendor will be opened publicly and all offers (except those that have been previously withdrawn, or voided bids) will be tabulated. The tabulation shall be made public at the time it is created. When negotiations after receipt of bids is authorized pursuant to G.S. 143-49 and 01 NCAC 05B.0503, only the names of offerors and the Goods and Services offered shall be tabulated at the time of opening. Cost and price shall become available for public inspection at the time of the award. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position.

At their option, the evaluators may request oral presentations or discussions with any or all Vendors for clarification or to amplify the materials presented in any part of the bid. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all bids should be complete and reflect the most favorable terms available from the Vendor. Prices bid cannot be altered or modified as part of a clarification.

Bids will generally be evaluated, based on completeness, content, cost and responsibility of the Vendor to supply the requested Goods and Services. Specific evaluation criteria are listed in Section 3.1 METHOD OF AWARD.

Upon completion of the evaluation process, the State will make Award(s) based on the evaluation and post the award(s) to the State's eVP website under the IFB number for this solicitation. Award of a Contract to one Vendor does not mean that the other bids lacked merit, but that, all factors considered, the selected bid was deemed most advantageous and represented the best value to the State.

The State reserves the right to negotiate with one or more Vendors, or to reject all original offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement, and in either case to require Vendor to submit a Best and Final Offer (BAFO) based on discussions and negotiations with the State.

3.4 PERFORMANCE OUTSIDE THE UNITED STATES

Vendor shall complete ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR. In addition to any other evaluation criteria identified in this IFB, the State may also consider, for purposes of evaluating proposed or actual contract performance outside of the United States, how that performance may affect the following factors to ensure that any award will be in the best interest of the State:

- a) Total cost to the State
- b) Level of quality provided by the Vendor
- c) Process and performance capability across multiple jurisdictions
- d) Protection of the State's information and intellectual property
- e) Availability of pertinent skills
- f) Ability to understand the State's business requirements and internal operational culture
- g) Particular risk factors such as the security of the State's information technology
- h) Relations with citizens and employees
- i) Contract enforcement jurisdictional issues

3.5 INTERPRETATION OF TERMS AND PHRASES

This IFB serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the State; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. 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 State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the State's needs as described in the IFB. Except as specifically stated in the IFB, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the State exercising its discretion to reject a bid in its entirety.

4.0 REQUIREMENTS

This Section lists the requirements related to this IFB. By submitting a bid, the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements, and terms and conditions stated in this IFB. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better bid, the Vendor is urged to submit these items in the form of a question during the question-and-answer period in accordance with the Bid Questions Section above.

4.1 PRICING

Bid price shall constitute the total cost to the State for complete performance in accordance with the requirements and specifications herein, including all applicable charges for handling, transportation, administrative and other similar fees. Complete ATTACHMENT A: PRICING FORM and include in Vendor's response.

4.2 DELIVERY

The Vendor shall deliver Free-On-Board (FOB) Destination to the following location(s):

Mailing address for delivery via US Postal Service within 30 days of PO issuance Quantity (149,600) no overruns
Bid number: 77-00011341 Address: Allegra (formerly MMS) 88 Roberts Street Asheville, NC 28801
*Must be strapped in bundles of 50 in Gaylord boxes. If not, A-B Tech reserves the right to charge for loss and labor that A-B incurs.
Mailing address for delivery via US Postal Service within 30 days of PO issuance Quantity (2,500) including overruns
Bid number: 77-00011341 Address: Asheville-Buncombe Technical Community College Attn: Josh Weaver, Chestnut Building 340 Victoria Road Asheville, NC 28801
*Must be strapped in bundles of 50 in Gaylord boxes. If not, A-B Tech reserves the right to charge for loss and labor that A-B incurs.

Vendor shall complete delivery within 30 consecutive calendar days after receipt of purchase orders.

For completion by Vendor: Delivery will be made from _____ _city, state) within _____ consecutive calendar days after receipt of purchase order. Promptness of delivery will be used as a factor in the award criteria.

4.3 SAMPLES

Samples offered shall be furnished, free of expense, prior to bid opening, and if not destroyed will, upon request, be returned to the vendor at the Vendors expense. A written request for return shall be made no later than 30 (thirty) days after the bid award, and Vendor shall provide a prepaid, pre-addressed shipping label suitable for return of the sample(s). Otherwise, the samples shall become the State's property, to use of disposed of at the State's discretion. Each individual sample shall be labeled with the vendor's name, proposal number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned , if requested as specified above.

Mailing address for delivery of samples via US Postal Service
Bid number: 77-00011341 Asheville-Buncombe Technical Community College Attn: Carmalita Fortenberry, Purchasing Agent, Roberson Building 340 Victoria Road Asheville, NC 28801

4.4 INVOICES

Vendor shall invoice the Purchasing Agency. The standard format for invoicing shall be Single Invoices meaning that the Vendor shall provide the Purchasing Agency with an invoice for each order. Invoices shall include detailed information to allow Purchasing Agency to verify pricing at point of receipt matches the correct price from the original date of order. The following fields shall be included on all invoices, as relevant:

Vendor's Billing Address, Customer Account Number, NC Contract Number, Order Date, Buyer's Order Number, Manufacturer Part Numbers, Vendor Part Numbers, Item Descriptions, Price, Quantity, and Unit of Measure.

INVOICES MAY NOT BE PAID UNTIL AN INSPECTION HAS OCCURRED AND THE GOODS OR SERVICES ACCEPTED.

4.5 FINANCIAL STABILITY

As a condition of contract award, the Vendor must certify that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

Each Vendor shall certify it is financially stable by completing ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential issues from contracting with a Vendor that is financially unstable. From the date of the Certification to the expiration of the Contract, the Vendor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification. The Contract Manager may require annual recertification of the Vendor's financial stability.

4.6 HUB PARTICIPATION

Pursuant to North Carolina General Statute G.S. 143-48, it is State policy to encourage and promote the use of small, minority, physically handicapped, and women contractors in purchasing Goods and Services. As such, this IFB will serve to identify those Vendors that are minority owned or have a strategic plan to support the State's Historically Underutilized Business program by meeting or exceeding the goal of 10% utilization of diverse firms as 1st or 2nd tier subcontractors. Vendor shall complete ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION.

4.7 REFERENCES

Vendor shall provide at least three (3) references, using ATTACHMENT E: CUSTOMER REFERENCE FORM, for which it has provided Services of similar size and scope to those proposed herein. The State *may* contact these users to determine whether the Services provided are substantially similar in scope to those proposed herein and whether Vendor's performance has been satisfactory. The information obtained *may* be considered in the evaluation of the Bid.

4.8 PERSONNEL

Vendor warrants that qualified personnel shall provide Services under this Contract in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the industry. Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

Should the Vendor's bid result in an award, the Vendor shall be required to agree that it will not substitute key personnel assigned to the performance of the Contract without prior written approval by the Contract Lead. Vendor shall further agree that it will notify the Contract Lead of any desired substitution, including the name(s) and references of Vendor's recommended substitute personnel. The State will approve or disapprove the requested substitution in a timely manner. The State may, in its sole discretion, terminate the Services of any person providing Services under this Contract. Upon such termination, the State may request acceptable substitute personnel or terminate the contract Services provided by such personnel.

4.9 VENDOR'S REPRESENTATIONS

If Vendor's bid results in an award, Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under the Contract. If any Services, deliverables, functions, or responsibilities not specifically described in this solicitation are required for Vendor's proper performance, provision and delivery of the Service and deliverables under a resulting Contract, or are an inherent part of or necessary sub-task included within such Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically

described in the Contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and/or other Deliverables.

4.10 AGENCY INSURANCE REQUIREMENTS MODIFICATION

A. Default Insurance Coverage from the General Terms and Conditions applicable to this Solicitation:

- ☐ Small Purchases
- ☒ Contract value in excess of the Small Purchase threshold, but up to \$1,000,000.00
- ☐ Contract value in excess of \$1,000,000.00

5.0 SPECIFICATIONS AND SCOPE OF WORK

Asheville-Buncombe Technical Community College's (A-B Tech) Continuing Education Schedule is the primary print/direct mail piece supporting enrollment and outreach training in the service areas of Buncombe and Madison counties. The solicitation covers print services and distribution of 152,150 copies of A-B Tech's Continuing Education Fall 2025, Winter 2025, and Spring/Summer 2026. Please refer to section 5.1 for the specification and section 5.2 regarding tasks/deliverables relative to this IFB. The quantity and delivery schedules of additional year(s) will be determined by the project owner in the future.

5.1 SPECIFICATIONS

The specific items and any specifications that the Purchasing Agency is seeking are listed below. Items offered by the Vendor must meet or exceed the listed Specifications to be considered for award.

Samples Required to be deemed responsive: Reference Section 4.3	
Specifications shown below apply to Section 7 Options 1, 2, & 3 with the only difference being total page count.	
A-B Tech Continuing Education Schedule Fall, Winter 2025, and Spring/Summer	
Item #	Specifications
Format:	Mac files FTP or Disk
Application:	PDF/InDesign CC
Quote requested for all Page Count variations.	52 pages + cover (56 pages total) 56 pages + cover (60 pages total) 60 pages + cover (64 pages total)
Finished Size:	8.25" x 10.75" trimmed and stitched
Image Area:	7.25" x 9.75"
Inks/Color 1 (inside)	4/4 full color with bleeds

Inks/Color 2 (outside)	4/4 bleeds
Paper 1 Interior	30lb text Groundwood (80 brightness)/Newsprint or equivalent
Pape 2: Cover	70#-100# Gloss Text Cover or equivalent
Number of Copies:	152,150 no overruns (subject to change due to mailing increases
Proof:	Hard Copy proof along with PDF electronic high-resolution print
Bindery:	Saddle Stitch

5.2 TASKS/DELIVERABLES

ITEM #	QTY.	UOM	DESCRIPTION
1	152,150	EACH	A-B Tech Continuing Education Schedule Fall 2025
2	152,150	EACH	A-B Tech Continuing Education Schedule Winter 2025
3	152,150	EACH	A-B Tech Continuing Education Schedule Spring/Summer 2026

VENDOR'S RESPONSE		
Item #	Specifications	Product/Services Offered Meets Specification
	<ul style="list-style-type: none"> Artwork supplied by customer Mail Prep 	For Informational Purposes
	<ul style="list-style-type: none"> Print and Estimated Delivery Schedules (Must be strapped in bundles of 50 in Gaylord boxes), If not A-B Tech reserves the right to charge for loss and labor that A-B Tech incurs 	For Informational Purposes
1	The A-B Tech Continuing Education Schedule Fall 2025 Schedule: To printer – June 28, 2025 Due to Allegra and to A-B Tech Main Campus: July 15, 2025 *dates likely to change	<input type="checkbox"/> YES <input type="checkbox"/> NO
2	The A-B Tech Continuing Education Schedule Winter 2025 Schedule: To printer – November 18, 2025 Due to Allegra and to A-B Tech Main Campus: December 9, 2025 *dates likely to change	<input type="checkbox"/> YES <input type="checkbox"/> NO
3	The A-B Tech Continuing Education Schedule Spring/Summer 2026 Schedule: To printer – March 2, 2026 Due to Allegra and to A-B Tech Main Campus: March 16, 2026 *dates likely to change	<input type="checkbox"/> YES <input type="checkbox"/> NO
4	Deliver Quantity 149,600 to Allegra (88 Roberts Street, Asheville, NC 28801)	

	Allegra is formerly MMS *Deliver quantity to Allegra is subject to change due to mailing increases/decreases	<input type="checkbox"/> YES <input type="checkbox"/> NO
5	Remainder and any over run to A-B Tech Main Campus, Attn: Josh Weaver, Chestnut Building, 340 Victoria Rd., Asheville, NC 28801	<input type="checkbox"/> YES <input type="checkbox"/> NO

5.3 DEVIATIONS

The nature of all deviations from the Specifications listed herein shall be clearly described by the Vendor. Otherwise, it will be considered that items offered by the Vendor are in strict compliance with the Specifications provided herein, and the successful Vendor shall be required to supply conforming goods. Deviations shall be explained in detail on an attached sheet. However, no implication is made or intended by the State that any deviation will be acceptable. Do not list objections to the North Carolina General Terms and Conditions in this section.

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provided for the Vendor's planning purposes.

6.1 CONTRACT MANAGER AND CUSTOMER SERVICE

The Vendor shall be required to designate and make available to the State a contract manager. The contract manager shall be the State's point of contact for Contract related issues and issues concerning performance, progress review, scheduling, and service.

Contract Manager Point of Contact	
Name:	
Office Phone #:	
Mobile Phone #:	
Email:	

The Vendor shall be required to designate and make available to the State for customer service. The customer service point of contact shall be the State's point of contact for customer service-related issues (define roles and responsibilities).

Customer Service Point of Contact	
Name:	
Office Phone #:	
Mobile Phone #:	

Email:	
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6.2 POST AWARD PROJECT REVIEW MEETINGS

The Vendor, at the request of the State, shall be required to meet periodically monthly with the State for Project Review meetings. The purpose of these meetings will be to review project progress reports, discuss Vendor and State performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

6.3 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost the State. A continuous improvement effort consists of various ways to enhance business efficiencies as performance progresses.

6.4 ACCEPTANCE OF WORK

Performance of the work and/or delivery of Goods shall be conducted and completed at least in accordance with the Contract requirements and recognized and customarily accepted industry practices. Performance shall be considered complete when the Services or Goods are approved as acceptable by the Contract Administrator.

Acceptance of Vendor's work product shall be based on the following criteria:

Meeting the delivery schedule as defined in section 5.2

Meeting the specifications as defined in section 5.1

The State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such work or delivery of a deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation, or testing, as applicable to the work or deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any specifications, acceptance criteria or otherwise fail to conform to the Contract, the State may exercise any and all rights hereunder, including, for Goods deliverables, such rights provided by the Uniform Commercial Code, as adopted in North Carolina.

6.5 DISPUTE RESOLUTION

During the performance of the Contract, the parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State's Contract Manager for resolution. Any claims by the State shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall agree to 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. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.6 CONTRACT CHANGES

Contract changes, if any, over the life of the Contract shall be implemented by contract amendments agreed to in writing by the State and Vendor. Amendments to the contract can only be made through the contract administrator.

6.7 POST AWARD PRODUCT SUBSTITUTIONS, ADDITIONS & REMOVALS

Post award product substitutions, additions and removals are not permitted without prior written approval from the Contract Administrator. Proposed substitutions, additions and removals shall be at the same or higher quality and at the same or lower price as the original item. Failure of the Vendor to comply with this requirement shall constitute sufficient cause to hold the Vendor in default or for removal from the contract.

The items included in this IFB are expected to cover the State's needs for the term of the Contract. In the case that the State's needs change over the term of the Contract, the State reserves the right to add additional products to the Contract that can be supplied by the awarded Vendor. The price for these added products will be mutually agreed to by the State and Vendor but are assumed to be priced at a discount similar to what is being offered on the products listed in the IFB.

6.8 PRICE ADJUSTMENTS

Prices proposed by the Vendor shall be firm for the first one (1) year of the contract.

Price increase requests shall be submitted in writing to the Contract Manager. Such requests shall include the reason(s) for the request and contain supporting documentation of the need based off the product/equipment documentation from the manufacturer. Price increases will be negotiated and agreed to by both the State and Vendor in advance of any price increase going into effect. The State is not obligated to accept pricing adjustments or increases and reserves the right to accept or reject them in part or in whole. Price de-escalation or decreases may be requested by the State at any time.

It is understood agreed that orders will be invoiced at the Contract pricing in effect on the date an order is placed. Invoicing that fails to comport with this provision may be subject to Contract cancellation.

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7.0 ATTACHMENTS****IMPORTANT NOTICE******RETURN THE REQUIRED ATTACHMENTS WITH YOUR RESPONSE**

FOLLOW THE LINKS TO ACCESS EACH ATTACHMENT

ATTACHMENT A: PRICING FORM

Complete and return the Pricing associated with all three (3) options which can be found in the tables below:

ESTIMATED QUANTITIES

The quantities indicated herein are estimates only and are provided for informational purposes based on the anticipated usage during the contract period. No maximum or minimum quantities are guaranteed. It shall be understood and agreed that the State may purchase more or less than the estimated quantities during the contract period. The State reserves the right to increase or decrease the quantities as needed. The State shall not be obligated to purchase more than its normal requirements. The State will be responsible only for items requested and received.

Specifications: Section 5.1 Applies to Options 1, 2, & 3 shown below (the only difference being total page count).

Year 1 Option 1

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2025	56	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2025	56	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2026	56	\$

Total Price Year 1 Option 1 \$ _____

Year 2 Option 1

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2026	56	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2026	56	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2027	56	\$

Total Price Year 2 Option 1 \$ _____

Year 3 Option 1

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2027	56	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2027	56	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2028	56	\$

Total Price Year 3 Option 1 \$ _____

Total Extended Price Option 1 \$ _____

Year 1 Option 2

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2025	60	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2025	60	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2026	60	\$

Total Price Year 1 Option 2 \$ _____

Year 2 Option 2

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2026	60	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2026	60	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2027	60	\$

Total Price Year 2 Option 2 \$ _____

Year 3 Option 2

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2027	60	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2027	60	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2028	60	\$

Total Price Year 3 Option 2 \$_____

Total Extended Price Option 2 \$_____

Year 1 Option 3

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2025	64	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2025	64	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2026	64	\$

Total Price Year 1 Option 3 \$_____

Year 2 Option 3

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2026	64	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2026	64	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2027	64	\$

Total Price Year 2 Option 3 \$_____

Year 3 Option 3

	QTY	UOM	DESCRIPTION	NUMBER OF PAGES (INCLUDES COVER)	EXTENDED PRICE
1	152,150	EA	A-B Tech Continuing Education Schedule Fall 2027	64	\$
2	152,150	EA	A-B Tech Continuing Education Schedule Winter 2027	64	\$
3	152,150	EA	A-B Tech Continuing Education Schedule Spring/Summer 2028	64	\$

Total Price Year 3 Option 3 \$ _____

Total Extended Price Option 3 \$ _____

ATTACHMENT B: INSTRUCTIONS TO VENDORS

The Instructions to Vendors, which are incorporated herein by this reference, may be found here:

<https://www.doa.nc.gov/formnorth-carolina-instructions-vendors/download?attachment>

ATTACHMENT C: NORTH CAROLINA GENERAL TERMS & CONDITIONS

The North Carolina General Terms and Conditions, which are incorporated herein by this reference, may be found here:

NORTH CAROLINA GENERAL TERMS & CONDITIONS

1. PERFORMANCE:

- a) It is anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include Services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables not subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of the State. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in this Contract. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State shall notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor agrees to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by the State.
- c) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.

- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to the State related to all Services performed or other deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed at a minimum in accordance with generally accepted and applicable industry standards.
- e) The State may document and consider in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

2. DEFAULT AND TERMINATION:

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. *See, G.S. 25-2-712.* In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State shall have the right to terminate the Contract by giving thirty days written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that are *prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license to the extent necessary for the State to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.*
- c) If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract for convenience at any time by providing 60 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this Contract shall, at the option of the State, become its property, and under any applicable Vendor license to the extent necessary for the State to use such property. If the Contract is terminated by the State for convenience, the State shall pay for those items or Services for which such option is exercised, less any payment or compensation previously made.

3. INTERPRETATION, CONFLICT OF TERMS:

- a) The definitions in the Instructions to Vendors in the relevant solicitation for this Contract, and in 01 NCAC 05A.0112 are specifically incorporated herein.
- b) If federal funds are involved in the transactions under this Contract, the Vendor shall comply with all applicable state and federal requirements and laws, except where State requirements are more restrictive. See the additional federal requirements included in the "Federal Funds Provisions" section below.

- c) "Purchasing Agency" herein is as defined in 01 NCAC 05A.0112, except that if this Contract has been entered into by the NC Department of Administration, Division of Purchase and Contract (P&C) as indicated in the Contract (e.g., a State Term Contract), then P&C will then be a Purchasing Agency for the purposes herein and in the Federal Funds Provisions, below.
 - d) Contracts made in contravention of General Statutes, Chapter 143, Article 3 and the Rules in 05 NCAC Chapter 5, are void. G.S. 143-58.
 - e) In cases of conflict between specific provisions in this Contract and any other referenced documents, the Order of Precedence shall be (high to low) (1) any special terms and conditions specific to this Contract, including any negotiated terms; (2) requirements, specifications and administrative terms; (3) these NORTH CAROLINA GENERAL TERMS AND CONDITIONS, including the Federal Funds Provisions; (4) Definitions and other provisions in INSTRUCTIONS TO VENDORS in this solicitation, which is specifically incorporated in this Contract; (5) PRICING, and (6) Vendor's Bid, to the extent specifically and mutually incorporated into this Contract.
 - f) In the event of conflict of terms between applicable provisions of the Federal Funds Provisions and the other provisions of these North Carolina General Contract Terms and Conditions, the more restrictive provision will govern.
4. GOVERNMENTAL RESTRICTIONS: In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
5. AVAILABILITY OF FUNDS: All payments to the Vendor shall be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.
6. TAXES: Any applicable taxes shall be invoiced as a separate item.
- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b) The agency(ies) participating in the Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
 - c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
7. SITUS AND GOVERNING LAWS:
- a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. G.S. 22B-3.
 - b) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract,

including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.

- c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

8. NON-DISCRIMINATION COMPLIANCE:

Wholly State Funded Contracts.

- a) The Vendor will take affirmative action in complying with all State requirements and laws concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability or rights, such as preserved by Governor Roy Cooper Order E.O. 24 or 25, and will take necessary action to ensure that its internal employee policies and procedures are consistent with Executive Order #82 (Roy Cooper, December 6, 2018), which extends workplace protections and accommodations to pregnant employees.
- b) Federal Law, such as the following, applies as provided for therein: Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis race, color, national origin and ensuring that individuals are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age); Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.) (prohibiting discrimination on the basis of sex); Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 (prohibiting discrimination on the basis of disability); Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.) (prohibiting age discrimination); Executive Order 11063 as amended by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended.

Contracts Partially or Wholly Federally Funded.

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

- c) The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- d) The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:
- e) The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding,

hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's legal duty to furnish information.

- f) The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - g) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts.
 - h) The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.
 - i) The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
 - j) The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering *agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.*
 - k) proceedings.
9. PAYMENT TERMS: Payment terms are not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Procuring Agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor.

The State does not agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney's fees. This Contract will not be construed as an agreement by the State to pay such costs and will be paid only as ordered by a court of competent jurisdiction.

10. CONDITION AND PACKAGING: Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose, is newly manufactured, *and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.*

11. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY: Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

a) Vendor warrants to the best of its knowledge that:

1. Performance under the Contract does not infringe upon any intellectual property rights of any third party; and
2. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) Should any deliverables supplied 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 deliverables, or replace or modify the same to become non-infringing. 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 cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.

c) 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 deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:

1. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
2. 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.

d) Vendor will not be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State's material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.

12. ADVERTISING: Vendor agrees not to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the State is willing to be included on a listing of its existing customers.

13. ACCESS TO PERSONS AND RECORDS:

- (a) During, and after the term hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 *et seq.*, typically five years), the State Auditor and any Purchasing Agency's internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of such retention of records period, the records shall be retained for one (1) year after all issues arising

out of the action are finally resolved or until the end of the record retentions period, whichever is later.

(b) The following entities may audit the records of this contract during and after the term of the contract to verify accounts and data affecting fees or performance:

1. The State Auditor.
2. The internal auditors of the affected department, agency or institution.
3. The Joint Legislative Commission on Governmental Operations and legislative employees whose primary responsibility is to provide professional or administrative services to the Commission.

(c) The Joint Legislative Commission on Governmental Operations has the authority to:

1. Study the efficiency, economy and effectiveness of any non-State entity receiving public funds.
2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity receiving public funds.
3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
4. Receive reports as required by law or as requested by the Commission.
5. Access and review
 - a. Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and
 - b. Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including, but not limited to (i) records related to the drafting and approval of the subcontract, and (ii) documents and records of the *contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.*

(d) The Joint Legislative Commission on Governmental Operations has the power to:

1. Compel access to any document or system of records held by a non-State entity receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with public funds.
2. Compel attendance of any officer or employee of any non-State entity receiving public funds, provided the officer or employee is responsible for implementing a program or providing a service paid for with public funds.

- (e) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.
- (f) Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.
- (g) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.
- (h) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

14. ASSIGNMENT OR DELEGATION OF DUTIES:

- a) As a convenience to the Vendor, the State may include any person or entity designated by the Vendor in writing as a joint payee on the Vendor's payment check. In no event shall such approval and action obligate the State to anyone other than the Vendor.
- b) If Vendor requests any assignment, or delegation of duties, the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon written request, the State may, in its unfettered discretion, approve an assignment or delegation to another responsible entity acceptable to the State, such as the surviving entity of a merger, acquisition or a corporate reorganization if made as part of the transfer of all or substantially all of the Vendor's assets. 01 NCAC 05B.1507. Any purported assignment or delegation made in violation of this provision shall be void and a material breach of the Contract. G.S. 143-58.

15. INSURANCE: This section provides minimum insurance coverage rates that are applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts are needed based on the likelihood and severity of exposure to the State. The analysis is documented in writing in the official file and considers the following non-exclusive factors:

1. Potential for damage to State property or property of a third party,
2. Potential for bodily injury to State employees or third parties,
3. Whether Vendor will transport State property, clients, or employees,
4. Use of a vehicle to accomplish the work or to travel to or from State locations,
5. Anticipated physical contacts of the Vendor with the State,
6. Anticipated number and activity of Vendor personnel within the State, and
7. Any other unique considerations that could result in harm, bodily injury, or property damage.

The Purchasing Agency has specified elsewhere in this Contract any increase in the minimum insurance coverage requirements below if the risk from the above factors is high.

- a) **REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the

Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.

- b) COVERAGE- During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:
1. For Small Purchases as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
 2. For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:
 - i. Worker's Compensation - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
 - ii. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
 - iii. Automobile - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; *\$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.*
 3. For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:
 - i. Worker's Compensation - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
 - ii. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 *Combined Single Limit. Defense costs shall be in excess of the limit of liability.*
 - iii. Automobile - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The

*minimum combined single limit shall be \$500,000.00 bodily injury and property damage;
\$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.*

16. GENERAL INDEMNITY:

- a) The Vendor shall indemnify, defend and hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims.
- b) The Vendor, at its own expense shall defend any action brought against the State, under this section. 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.
- c) The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services as part of this Contract with the State.
- d) As part of this provision for General indemnity, if federal funds are involved in this procurement, the Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify, defend and hold and save the State harmless from any claims or losses resulting to the State from the Vendor's noncompliance with such federal requirements or law in the performance of this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract.
- e) The State does not participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial. *See, G.S. 22B-3,-10.*

17. ELECTRONIC PROCUREMENT: (G.S. 143-48.3)

GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:

- a) 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.
- b) The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. 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, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.
- c) Vendor shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. Vendor shall be responsible for all activity and all charges by its agents or employees. Vendor agrees not to permit a third party to use its E-Procurement Services 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 email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

E-PROCUREMENT FEES – APPLICABLE ONLY TO GOODS PURCHASES

- d) THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE, CURRENTLY 1.75% (.0175), ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) FOR THE AMOUNT OF ANY GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE (OR ANY OFFICIAL REPLACEMENT

SERVICE). G.S. 66-58.12; See, NC E-Procurement Terms of Use. This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. 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.

- e) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the E-Procurement Supplier Manager (Supplier Manager), based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless the Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee 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 invoice for the transaction fee, or it shall be considered a material breach of Contract.

Pursuant to G.S. 147-86.23, the service will charge 1) interest on past due balances at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due, and, 2) late payment penalties, currently ten percent (10%) of the account receivable. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. 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.

18. **SUBCONTRACTING:** Performance under the Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.
19. **CONFIDENTIALITY:** Vendor information that cannot be shown to be, e.g., a trade secret, may be subject to public disclosure under the terms of the State Public Records Act (SPRA), beginning at G.S. 132.1. Blanket assertions of confidentiality are not favored, but confidentiality of specific material meeting one or more exceptions in the SPRA will be honored. Vendors are notified that if the confidentiality of material is challenged by other parties, the Vendor has the responsibility of defending the assertion of confidentiality. G.S. 143-52(a).
20. **CARE OF STATE DATA AND PROPERTY:** Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of the State.

The State's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor agrees to reimburse the State for loss or damage of State property while in Vendor's custody. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.

The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B1379. For further information, see, G.S. 75-60 et seq. Notice is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State

network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. See, e.g., G.S. 143B-1376.

- 21. OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State Purchasing Agency. Vendor shall give notice to the Purchasing Agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States. See, G.S. 14359.4.

- 22. ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

- 23. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurement related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

- 24. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.

- 25. NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor supplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

- 26. 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, other catastrophic epidemic or pandemic, natural event or Act of God.

- 27. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.

- 28. FEDERAL FUNDS PROVISIONS:**

Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistently with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract. Failure or

unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

Any links to websites not maintained by the State are provided as a courtesy. The State does not warrant or guarantee the accuracy of the hyperlink, or the information contained therein.

- a) No governmental non-competes. Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State's award of any work under this Contract.
- b) Program Monitoring. Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- c) Remedies and Termination. For purposes of this section the State Remedies and Termination provisions above apply as written.
- d) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

Compliance with the Contract Work Hours and Safety Standards Act.

1. *Overtime requirements.* No Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked more than forty hours in such workweek.
2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. §5.5(b)(1).
3. *Withholding for unpaid wages and liquidated damages.* The Purchasing Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.5(b)(2).
4. *SubContracts.* The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29

C.F.R. §5.5(b)(2) through (4).

e) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.

Clean Air Act

1. The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

Federal Water Pollution Control Act

1. The Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees that these requirements will be included in each subcontract exceeding *\$150,000 financed in whole or in part with Federal assistance.*

f) Debarment and Suspension.

1. This Contract, if federal funding is used, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor is required to verify that none of the Vendor's principles (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

g) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (as Amended).

To the extent applicable, Vendors that apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or

any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with Nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Vendors must sign and submit to the Purchasing Agency the certification. See the latest version of "Certification for Contracts, Grants, Loans, and Cooperative Agreements" found at <https://ncadmin.nc.gov/documents/vendor-forms>.

h) Procurement of Recovered Materials.

1. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
 - Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - Meeting Contract performance requirements; or
 - At a reasonable price.
2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
3. The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

i) Access to Records. In addition to the North Carolina General Contract Terms & Conditions section entitled "ACCESS TO PERSONS AND RECORDS" included in this Contract, the following access to records requirements apply to this Contract:

1. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.

j) Modifications to Contract. Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled "AMENDMENTS," except as approval and signature by any federal official may also be required.

k) Records Retention. All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.

- l) Energy Efficiency. All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
- m) Program Fraud and False or Fraudulent Statements or Related Acts. Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.
- n) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.
- o) Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.
- p) Federal Seals, Logos, and Flags. In addition to the prohibitions of the North Carolina General Contract Terms & Conditions section above entitled "ADVERTISING," the Vendor shall not use the seal(s), logos, crests, or *reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.*
- q) System for Awards Management. Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors> to verify that Contractors *or sub-Recipients have not been suspended or debarred from doing business with federal or State government.*

ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION

Complete and return the Historically Underutilized Businesses (HUB) Vendor Information form, which can be found at the following link:

<https://www.doa.nc.gov/pandc/onlineforms/form-hub-supplemental-vendor-information-9-2021/download>

ATTACHMENT E: CUSTOMER REFERENCE FORM

Complete and return the Customer Reference Form, which can be found at the following link:

<https://ncadmin.nc.gov/media/15503/open>

ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR

Complete and return the Location of Workers Utilized by Vendor, which can be found at the following link:

<https://www.doa.nc.gov/pandc/onlineforms/form-location-workers-09-2021/download>

ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION

Complete, sign, and return the Certification of Financial Condition, which can be found at the following link:

<https://www.doa.nc.gov/pandc/onlineforms/form-certification-financial-condition-09-2021/download>

***** Failure to Return the Required Attachments May Eliminate
Your Response from Further Consideration *****