

STATE OF NORTH CAROLINA

DEPARTMENT OF STATE TREASURER

Request for Proposal #: 07-2023003

Unclaimed Property Online Auction Services

Date of Issue: November 7, 2023

Proposal Opening Date: December 13, 2023

At 2:00PM ET

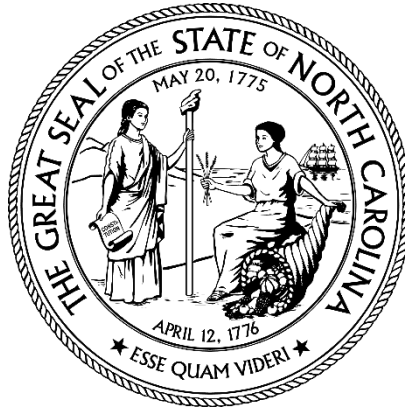
Direct all inquiries concerning this RFP to:

Elizabeth Cass

Contract Specialist II

Email: Elizabeth.Cass@nctreasurer.com

Phone: (919) 814-3895



STATE OF NORTH CAROLINA

Request for Proposal # 07-2023003

For internal State agency processing, including tabulation of proposals, 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 proposal.
Failure to do so may subject your proposal 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>

STATE OF NORTH CAROLINA DEPARTMENT OF STATE TREASURER

Refer <u>ALL</u> Inquiries regarding this RFP to the procurement lead through the Message Board in the Sourcing Tool. See Section 2.5 for details:	Request for Proposal #: 07-2023003
	Proposals will be publicly opened: Wednesday December 13, 2023, 2:00PM ET via Microsoft Teams. See Section 2.6 of this RFP.
Using Agency: North Carolina Department of State Treasurer, Unclaimed Property Division	Commodity No. and Description: 801416- Sales and Business Promotion Services On-line Auction Services for the Inventory of the Unclaimed Property Division
Requisition No.: N/A	

EXECUTION

In compliance with this Request for Proposals (RFP), 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 proposal, the undersigned Vendor understands that false certification is a Class I felony and certifies that:

- this proposal 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 proposal, 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 RFP, 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 RFP, 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 **NORTH CAROLINA INSTRUCTION TO VENDORS** and the **NORTH CAROLINA GENERAL TERMS AND CONDITIONS incorporated herein**. These documents can be accessed from the Ariba Sourcing Tool.

Failure to execute/sign proposal prior to submittal may render proposal invalid and it MAY BE REJECTED. Late proposals 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):		

Proposal Number: RFP 07-2023003

Vendor: _____

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 ninety (90) days from date of proposal 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 RFP.

ACCEPTANCE OF PROPOSAL

If your proposal is accepted, all provisions of this RFP, 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.

FOR STATE USE ONLY: Offer accepted and Contract awarded this _____ day of _____, 20____, as indicated on

The attached certification, by _____.

(Authorized Representative of The North Carolina Department of State Treasurer)

Contents

1.0	PURPOSE AND BACKGROUND	5
1.1	CONTRACT TERM.....	5
2.0	GENERAL INFORMATION.....	5
2.1	REQUEST FOR PROPOSAL DOCUMENT	5
2.2	E-PROCUREMENT FEE	5
2.3	NOTICE TO VENDORS REGARDING RFP TERMS AND CONDITIONS	6
2.4	RFP SCHEDULE	6
2.5	PROPOSAL QUESTIONS	6
2.6	PROPOSAL SUBMITTAL	7
2.7	PROPOSAL CONTENTS	8
2.8	DEFINITIONS, ACRONYMS, AND ABBREVIATIONS	8
3.0	METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS.....	10
3.1	METHOD OF AWARD	10
3.2	CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION.....	10
3.3	PROPOSAL EVALUATION PROCESS.....	10
3.4	EVALUATION CRITERIA	11
3.5	PERFORMANCE OUTSIDE THE UNITED STATES	12
3.6	INTERPRETATION OF TERMS AND PHRASES.....	12
4.0	REQUIREMENTS	12
4.1	PRICING.....	12
4.2	INVOICES.....	12
4.3	VENDOR REMITTANCE ADDRESS	13
4.4	SUBSTITUTE W-9 PROCESS FROM THE OFFICE OF THE STATE CONTROLLER	13
4.5	FINANCIAL STABILITY	13
4.6	HUB PARTICIPATION	14
4.7	VENDOR EXPERIENCE.....	14
4.8	REFERENCES	14
4.9	BACKGROUND CHECKS.....	15
4.10	PERSONNEL.....	17
4.11	VENDOR'S REPRESENTATIONS	17
4.12	AGENCY INSURANCE REQUIREMENTS MODIFICATION	17
4.13	DATA SECURITY AND PAYMENT ACCEPTANCE REQUIREMENTS	18
4.14	CAPABILITIES OF VENDOR AUCTION WEBSITE AND SYSTEM.....	19

5.0	UNCLAIMED PROPERTY ONLINE AUCTIONS SCOPE OF WORK	20
5.1	RESPONSIBILITIES OF THE UPD	20
5.2	RESPONSIBILITIES OF THE VENDOR.....	20
5.3	PROJECT ORGANIZATION.....	21
6.0	CONTRACT ADMINISTRATION.....	21
6.1	CUSTOMER SERVICE AND POINTS OF CONTACT	21
6.2	CONTINUOUS IMPROVEMENT.....	22
6.3	ACCEPTANCE OF WORK.....	22
6.4	FAITHFUL PERFORMANCE.....	23
6.5	DISPUTE RESOLUTION.....	23
6.6	CONTRACT CHANGES.....	23
	ATTACHMENT A: PRICING.....	24
	ATTACHMENT B: NORTH CAROLINA INSTRUCTIONS TO VENDORS	25
	ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION	46
	ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR.....	47
	ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION.....	48

1.0 PURPOSE AND BACKGROUND

North Carolina's Unclaimed Property Law, North Carolina General Statute 116B, requires financial organizations to report and deliver contents of safe deposit boxes to the North Carolina Department of State Treasurer, Unclaimed Property Division (UPD or State) after the property has been deemed abandoned within the period established by General Statute 53C-6-13.- According to N.C.G.S,§ 116B-65, in most instances, the UPD must sell contents of safe deposit boxes within five (5) years of receiving the property.

The UPD is responsible for inventorying the contents of safe deposit boxes upon receipt and creating an initial description. During inventory, the contents are grouped together into similar categories called Lots. All items included in a Lot are sold together. The UPD establishes the starting auction price and initial description of a Lot by utilizing a documented appraisal or an appraisal certificate provided by UPD's certified Vendor Appraiser(s).

This shall be an Agency Specific Term Contract, as such the UPD does not guarantee any minimum or maximums under this Contract. The UPD has approximately 1,000 Lots of unclaimed property over the initial three-year term to be auctioned within the categories listed below:

- a) Jewelry
- b) Gemstones
- c) Precious Metals
- d) Coins and Currency
- e) Miscellaneous Property

The intent of this solicitation is to award this RFP to a qualified Vendor, to provide the following Online Auction Services for the UPD: (1) provide proposed auction schedule to sell 1,000 lots over the initial three-year term; (2) digitally photograph each Lot at 3200 Atlantic Avenue, Raleigh, NC 27604; (3) create written descriptions for each Lot; (4) submit marketing plan to UPD; (5) Communicate terms and conditions of auction to bidders and notify winning bidder of process required to complete the sales transaction; (6) provide auction platform and reporting functionality to include historical auction data and auction associated reports; (7) remit sales proceeds to UPD.

Vendor's proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

1.1 CONTRACT TERM

The Contract shall have an initial term of three (3) years, with the intent of the term to begin on January 1, 2024, however, should the Contract be awarded after January 1, 2024, the initial term date shall be provided in the Notice of Award to the Vendor. With the Vendor's concurrence, the State reserves the right to extend the Contract after the last active term.

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

2.0 GENERAL INFORMATION

2.1 REQUEST FOR PROPOSAL DOCUMENT

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

2.2 E-PROCUREMENT FEE

ATTENTION: This is an NC eProcurement solicitation facilitated by the Ariba Network. 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/>.

What is the Ariba Network?

The Ariba Network is a web-based platform that serves as a connection point for buyers and vendors. Vendors can log in to the Ariba Network to view purchase orders, respond to electronic requests for quotes, participate in Sourcing Events, and collaborate with buyers on contract documents.

For training on how to use the Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site: <http://eprocurement.nc.gov/training/vendor-training>

2.3 NOTICE TO VENDORS REGARDING RFP 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 RFP 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 RFP.

If Vendors have questions, issues, regarding any component of this RFP, those must be submitted as questions in accordance with the instructions in the PROPOSAL 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 RFP 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 proposal or otherwise. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor's proposal shall constitute a firm offer that shall be held open for the period required herein ("Validity Period" above).

The State may exercise in its discretion to consider Vendor proposed modifications. By execution and delivery of this RFP 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 through 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 proposal as nonresponsive.

2.4 RFP SCHEDULE

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

Event	Responsibility	Date and Time
Issue RFP	State	November 7, 2023
Submit Written Questions	Vendor	November 21, 2023, by 2:00PM ET
Provide Response to Questions	State	On or Before November 30, 2023, by 10:00AM ET
Submit Proposals	Vendor	December 13, 2023, at 2:00PM ET
Contract Award	State	January 1, 2024, or date provided in Notice of Award letter.

2.5 PROPOSAL QUESTIONS

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

Questions related to the content of the solicitation, or the procurement process should be directed to the person on the title page of this document via the Sourcing Tool's message board by the date and time specified in the RFP SCHEDULE Section of this RFP. Vendors will enter "RFP # 07-2023003 – Questions" as the subject of the message. Question submittals should include a reference to the applicable RFP section. This is the only manner in which questions will be received.

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

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

2.6 PROPOSAL 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 proposal has been received as described in this RFP by the specified time and date of opening. Failure to submit a proposal in strict accordance with instructions provided shall constitute sufficient cause to reject a Vendor's proposal(s). Solicitation responses are subject to Sealed Bidding requirements.

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

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

Tips for Using the Sourcing Tool

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

If confidential and proprietary information is included in the proposal, also submit one (1) signed, REDACTED copy of the proposal. 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 proposal with its proposal submission, the Department may release an unredacted version if a record request is received.

The North Carolina Department of State Treasurer will be conducting the live bid openings over Microsoft Teams. Below is the information for this procurement's bid opening scheduled for Wednesday December 13, 2023, at 2:00PM ET.

Microsoft Teams meeting Join on your computer or mobile app. Join with a video conferencing device.

Microsoft Teams meeting

Join on your computer, mobile app or room device.

[Click here to join the meeting](#)

Meeting ID: 297 202 384 451

Passcode: JkDSCp

[Download Teams](#) | [Join on the web](#)

2.7 PROPOSAL CONTENTS

Vendors shall provide responses to all questions and complete all attachments for this RFP that require the Vendor to provide information and upload them to the Sourcing Event in the Sourcing Tool. Vendor may not be able to submit its response in the Sourcing Tool unless all required items are addressed. Vendors shall provide authorized signatures where requested. Failure to provide all required items, or Vendor's submission of incomplete items, may result in the State rejecting Vendor's proposal, in the State's sole discretion.

Vendor shall download the entire RFP, complete each section, and return the executed response in the Sourcing Tool:

- a) Cover Letter, which must contain the following: (i) a statement that confirms that the proposer has read the RFP in its entirety, including all links, and all Addenda released in conjunction with the RFP; (ii) a statement that the Vendor agrees to perform in accordance with the scope of work, requirements, and specifications contained herein; and (iii) Vendor's agreement to comply with all instructions, terms and conditions, and attachments.
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.
- c) Completed and signed version of all EXECUTION PAGES, within the RFP (Section 4.3 Vendor Remittance Address, Section 4.8 References, Section 4.9.4 Vendor Background Check Agreement, Section 4.13 Data Security and Payment Acceptance Requirements, Section 6.1 Points of Contact and Customer Service), along with the body of the RFP.
- d) Signed receipt pages of any addenda released in conjunction with this RFP, if required to be returned.
- e) Vendor's Proposal addressing all Specifications of this RFP.
- f) Completed version of ATTACHMENT A: PRICING
- g) Returned and included ATTACHMENT B: NORTH CAROLINA INSTRUCTIONS TO VENDORS
- h) Returned and included ATTACHMENT C: NORTH CAROLINA GENERAL TERMS AND CONDITIONS
- i) Completed version of ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION
- j) Completed version of ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR
- k) Completed and signed version of ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION

2.8 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

Relevant definitions for this RFP are provided in 01 NCAC 05A .0112 and in the Instructions to Vendors found in the Sourcing Tool, which are incorporated herein by this reference.

The following definitions, acronyms, and abbreviations are also relevant to this RFP:

- a. **ADDENDUM:** a document issued to supplement or modify the original Solicitation document. Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope changes to the Solicitation.
- b. **AGENCY SPECIFIC TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities for a single entity.
- c. **APPRAISAL:** An informal inspection, identification, and valuation of property.
- d. **APPRAISAL CERTIFICATE:** A formal document prepared by Vendor and signed by the Vendor setting forth the Vendor's professional opinion as to the detailed description and Fair Market Value of an item.
- e. **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency.

- f. **COMPLETED AUCTION:** An auction for which the proceeds have been received by the Vendor from the purchaser(s), for all items in the auction.
- g. **CONTRACT:** A Contract resulting from or arising out of Vendor responses to this Solicitation.
- h. **CONTRACT ADMINISTRATOR:** Representatives of the Vendor and the Department who shall administer the contract after award, as identified in Section 6.1.
- i. **CONTRACT MANAGER:** Representative of the North Carolina Department of State Treasurer identified in Section 6.1 who will correspond with potential Vendors concerning solicitation issues and will oversee the award of the contract with the Vendor providing the best offer to the State.
- j. **COINS AND CURRENCY:** Metal or paper medium of exchange authorized by a government for use as money. May include current or past circulation, and of both foreign and domestic type.
- k. **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.
- l. **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns the commodity in transit and files any claims. Vendor pays all freight and any related transportation charges. A Solicitation may request that a Vendor separately identify freight charges in its bid, but no amount or charge not included as part of the total bid price will be paid.
- m. **GEMSTONES:** Precious or semiprecious stones, generally cut, polished, and used in a piece of jewelry.
- n. **HUB:** Historically Underutilized Business <https://ncadmin.nc.gov/businesses/hub>
- o. **JEWELRY:** Personal ornaments that are typically made from or contain jewels and precious metal, including but not limited to, necklaces, rings, or bracelets.
- p. **LOT:** A grouping of similar products within this Solicitation document.
- q. **MISCELLANEOUS PROPERTY:** Collectible items including, but not limited to, watches, stamp collections, knives, figurines, flatware, baseball cards and other sports memorabilia, autographs, and historical documents.
- r. **NCDST:** The North Carolina Department of State Treasurer
- s. **PRECIOUS METALS:** Classification of metals, such as gold, silver, platinum, and palladium, which are considered to be rare and/or have a high economic value.
- t. **QUALIFIED PROPOSAL:** A responsive proposal response submitted by a responsible Vendor.
- u. **OFFER:** the bid or proposal submitted in response this Solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
- v. **OFFEROR:** the single legal entity submitting the Offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.
- w. **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
- x. **RESPONSIBLE:** Refers to a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
- y. **RESPONSIVE:** Refers to an Offer that conforms to the Requirements of the Solicitation in all respects to be considered by the State for award.
- z. **RFP:** Request for Proposals (a type of Solicitation document)
- aa. **SERVICES:** The tasks and duties undertaken by the Vendor to fulfill the requirements and specifications of this solicitation.
- bb. **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
- cc. **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, institutions, boards, commissions, universities, and units of the State.
- dd. **STATE DEPARTMENTS:** Department of Administration, Department of Agriculture and Consumer Services, Department of Commerce, Department of Natural and Cultural Resources, Department of Environmental Quality, Department of Health and Human Services, Department of Information Technology, Department of Insurance, Department of Justice, Department

of Labor, Department of Military and Veteran Affairs, Department of Public Instruction, Department of Public Safety, Department of Revenue, Department of State Treasurer, Office of the Secretary of the State, Department of Transportation, Wildlife Resources Commission, Office of Budget and Management, Office of the Governor, Office of the Lieutenant Governor, Office of The State Auditor, Office of the State Controller.

- ee. **TID:** Tangible Identification Number. A unique identifying number assigned by the State to a Lot.
- ff. **THE CONTRACT:** A contract resulting from or arising out of Vendor responses to this solicitation document.
- gg. **UPD:** Unclaimed Property Division.
- hh. **VENDOR:** The supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Solicitation document. Following award of a contract, the term refers to an entity receiving such an award.
- ii. **WORK:** All labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.
- jj. **YOU and YOUR:** Offeror.

3.0 METHOD OF AWARD AND PROPOSAL 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 qualified proposals will be evaluated, and awards will be made to the Vendor(s) meeting the specific RFP Specifications and achieving the highest and best final evaluation, based on the criteria described in Section 3.4 Evaluation Criteria.

While the intent of this RFP 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 RFP 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 proposals received.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

While this RFP 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 proposal to this RFP, 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 proposal 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 RFP or inquiries directed to the purchaser named in this RFP regarding requirements of the RFP (prior to proposal submission) or the status of the award (after submission) are excepted from this provision.

3.3 PROPOSAL EVALUATION PROCESS

Only responsive submissions will be evaluated.

The State will conduct a One-Step evaluation of Proposals:

Proposals will be received according to the method stated in the Proposal Submittal Section above.

All proposals must be received by the issuing agency not later than the date and time specified in the RFP 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 RFP SCHEDULE Section above, unless modified by Addendum, the proposal 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 are 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. If negotiation is anticipated, 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 proposal. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all proposals should be complete and reflect the most favorable terms available from the Vendor.

Upon completion of the evaluation process, the State will make award(s) based on the evaluation and post the award(s) to the *electronic Vendor Portal (eVP)*, <https://evp.nc.gov>, under the RFP number for this solicitation. Award of a Contract to one Vendor does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal 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 EVALUATION CRITERIA

In addition to the general criteria in G.S. 143-52 which may or may not be relevant to this RFP, all qualified proposals will be evaluated, and award made based on considering the following criteria, to result in an award most advantageous to the State:

BEST VALUE: "Best Value" procurement methods are authorized by N.C.G.S. §§143-135.9 and 143B-1350(h). The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's offer; the Vendor's past performance; and the evaluated probability of performing the specifications stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement.

A ranking method of source selection will be utilized in this procurement using evaluation criteria listed in order of importance in the Evaluation Criteria section below to allow the State to award this RFP to the Vendor(s) providing the Best Value and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against, other non-price factors.

EVALUATION METHOD: All qualified proposals will be evaluated under a Best Value methodology, which is on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor, and award made based on considering the below criteria, to result in an award most advantageous to the State. The evaluation criteria are listed in order of importance with no specific percentage or weight assigned. Proposals will be evaluated using the best-value, trade-off method by evaluating the strengths and weaknesses of each proposal against the evaluation criteria

and other proposals received. Vendor responses shall be evaluated on the quality and clarity of the content and the level of detail used to demonstrate the Vendor's understanding of the Scope of Work. Proposals will be ranked in accordance with the responses and best value determined by the NCDST UPD.

- 1) Vendor's response detailing how Vendor will complete the required duties and responsibilities (Section 5.2)
- 2) Capabilities of Vendor Auction Website and System (Section 4.14)
- 3) Vendor Experience (Section 4.7)
- 4) Vendor References (Section 4.8)
- 5) Pricing, Attachment A.

3.5 PERFORMANCE OUTSIDE THE UNITED STATES

Vendor shall complete ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR. In addition to any other evaluation criteria identified in this RFP, 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

3.6 INTERPRETATION OF TERMS AND PHRASES

This RFP 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 proposals 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 RFP. Except as specifically stated in the RFP, 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 proposal in its entirety.

4.0 REQUIREMENTS

This Section lists the requirements related to this RFP. By submitting a proposal, 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 RFP. 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 proposal, the Vendor is urged to submit these items in the form of a question during the question-and-answer period in accordance with the Proposal 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 upload with Vendor's response in the Sourcing Tool. The pricing provided in ATTACHMENT A, or resulting from any negotiations, is incorporated herein and shall become part of any resulting Contract.

4.2 INVOICES

Vendor shall be paid for its services through a commission rate earned from the sale of property. Vendor shall withhold any approved commission rate prior to sending net proceeds to the State. In conjunction with the sending of net proceeds, Vendor

shall provide an agreed upon file to the State, containing, at a minimum, the Tangible Identification Number (TID), Description of the Lot, Gross Proceeds, Commission Amount, and Net Proceeds.

The State does not anticipate a need for Vendor to submit an invoice to the State, but if such should occur, Vendor shall invoice the NCDST UPD. The standard format for invoicing shall be Single Invoices. If an Invoice(s) is needed an agreeable format shall be determined by the NCDST UPD and the Vendor prior to issuance. At a minimum, the following shall be included on all invoices:

1. Invoices shall bear the correct contract number to ensure prompt payment. The Vendor's failure to include the correct contract number may cause delay in payment. Invoices must include an invoice date.
2. Invoices are Net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. NCDST will not provide payment of late fees. Refer to ATTACHMENT C: NORTH CAROLINA GENERAL TERMS AND CONDITIONS, Paragraph 9 Payment Terms.
3. Invoices must be submitted to the accounts payable box via a non-encrypted e-mail at DSTAccountsPayable@nctreasurer.com and to the UPD Contract Manager at Cathrine.Mills@nctreasurer.com, with a CC to MaryAnne.Fitzpatrick@nctreasurer.com

4.3 VENDOR REMITTANCE ADDRESS

Vendor shall provide its "Remit To" address below for all goods, and/or services, completed under this Contract. This address must match the address identified on all invoices and be the address registered with the NC Vendor Portal and Office of the State Controller.

For Vendor Completion:

Name: _____

Street: _____

City/State: _____

Zip Code: _____

4.4 SUBSTITUTE W-9 PROCESS FROM THE OFFICE OF THE STATE CONTROLLER

Upon the award of this contract, and prior to receiving any payment or reimbursement thereunder, the selected Vendor will be required to complete and submit the Office of State Controller's ("OSC") Substitute W-9 Form to the Department of State Treasurer ("DST"). If the successful Vendor has not previously submitted a Substitute W-9 Form to the State—likely because the Vendor has not previously contracted with any North Carolina State government entity—such Vendor will be required to complete and submit to NCDST, the *Request for Taxpayer Identification*

Substitute W-9 Form. If the successful Vendor has an existing Substitute W-9 Form on file with the State, but the tax information contained in that *form is no longer accurate, such Vendor will be required to complete and submit to DST the Modification to Existing Vendor Records* Substitute W-9 Form. In either case, the successful Vendor shall make its submission by emailing the appropriate form to DST's Financial Operations Division at the following address: DSTAccountsPayable@nctreasurer.com.

For general information regarding the Substitute W-9 Form and OSC's vendor registration process generally, please visit www.osc.nc.gov/vendor-resources. **Any specific questions regarding completing this form should be addressed to the email address noted above.**

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 F: 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 RFP 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 VENDOR EXPERIENCE

In its proposal Vendor shall provide a response to each of the listed items below. Failure to demonstrate all items may result in a disqualification of Vendor's proposal.

1. Vendor shall demonstrate experience with public sector entities and private sector clients with similar or greater size and complexity to the NCDST. Vendor shall provide information as to the qualifications and experience of all executives, managerial, legal, and professional personnel to be assigned to this Contract, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.
2. Vendor shall demonstrate experience with auctioning Jewelry, Gemstones, Precious Metals, Coins and Currency, and Miscellaneous Property on Vendor's Auction Website by providing:
 - i. the annual auction volume (in number of listings and total gross sales) for each of the five (5) categories above per calendar year for the past five (5) years.
 - ii. the amount of time (s) the property had to be listed in order to provide a successful sale.
 - iii. average initial listing price versus average final sales price for each of the five (5) categories above per calendar year for the past five (5) years.

4.8 REFERENCES

For Vendor Completion:

Vendor must provide at least three (3) references, using the table below, for which it has provided Services of similar size and scope to those proposed herein, preferably with at least one other State entity. 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 Proposal.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER	EMAIL ADDRESS

4.9 BACKGROUND CHECKS

The Vendor and its personnel performing services onsite at the NCDST UPD, located at 3200 Atlantic Ave, Raleigh, North Carolina 27604, are required to provide or undergo background checks at Vendor's expense prior to beginning work with the State. Further, any personnel or agent of Vendor performing Services under this Contract, regardless of being onsite, may be required to undergo a background check at the expense of the Vendor, if so, requested by the NCDST. As part of Vendor background checks, the following details must be provided to the State:

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, by Vendor, its officers or directors, or any of its employees or other personnel to provide Services on this project, of which Vendor has knowledge, or provide a statement that Vendor is aware of none;
- b) Any **criminal investigation** for any offense involving moral turpitude, including, but not limited to fraud, misappropriation, falsification or deception pending against Vendor of which it has knowledge, or provide a statement Vendor is aware of none;
- c) Any **regulatory sanctions** levied against Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies within the past three years or a statement that there are none. As used herein, the term "regulatory sanctions" includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings;
- d) Any **regulatory investigations** pending against Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies of which Vendor has knowledge or a statement that there are none.
- e) Any **civil litigation**, arbitration, proceeding, or judgments pending against Vendor during the three (3) years preceding submission of its bid herein or a statement that there are none.

Vendor's response to these requests shall be considered a continuing representation, and Vendor's failure to notify the State within thirty (30) days of any criminal litigation, investigation or proceeding involving Vendor or its then current officers, directors or persons providing Services under this Contract during its term shall constitute a material breach of contract. The provisions of this paragraph shall also apply to any subcontractor utilized by Vendor to perform Services under this Contract.

4.9.1 CRIMINAL BACKGROUND CHECK

It is the policy of the State to provide a safe environment for State Government employees to work. Due to the Contract requirements, the State requires criminal background checks at Vendor's expense prior to beginning work with the State of Vendor and its personnel performing services onsite at the NCDST UPD, located at 3200 Atlantic Ave, Raleigh, North Carolina 27604. Further, any personnel or agent of Vendor performing Services under this Contract, regardless of being onsite, may be required to undergo a criminal background check at the expense of the Vendor, if so, requested by the NCDST

The following requirements must be met:

- a) Criminal background checks shall be current and completed within ninety (90) days of the Contract effective date but no later than prior to performing any Services on State property.
- b) The criminal background check shall include a social security verification/check, felonies, misdemeanors, and traffic records covering a minimum of the last seven (7) years for all states and countries where the individual has resided. The criminal background check information shall be first thoroughly reviewed by Vendor and then sent to the Contract Administrator for review and approval. Out of state searches shall be required for persons living in the state of NC for fewer than seven (7) years. Fingerprint background checks may be required in some instances depending on the facility requirements.
- c) Copies of the original criminal background check shall be sent to the Contract Administrator for evaluation. In some cases, badging cannot take place until after the evaluation and approval of Vendor's criminal checks.
- d) When a new employee or individual is identified to perform Services on this Contract, Vendor shall provide the Contract Administrator with a criminal background check before the individual can be approved for work. Persons without approved

criminal background checks shall not be allowed to work in the relevant buildings until proper documentation is submitted and approved.

- e) The State may require Vendor to exclude Vendor's employees, agents, representatives, or subcontractors based on the background check results. Discovery that one or more employees have convictions does not disqualify Vendor from award.
- f) Additionally, the State may use The North Carolina Department of Public Safety Offender Public Information or similar Services to conduct additional background checks on Vendor's proposed employees.

4.9.2 BACKGROUND CHECK LIMITATIONS

Any individual representing Vendor, who:

- a) In his/her lifetime, has been adjudicated as a habitual felon as defined by GS 14-7.1 or a violent habitual felon as defined by GS 14-7.7, shall not be allowed to work in buildings occupied by State Government employees.
- b) During the last seven (7) years has been convicted of any criminal felony or misdemeanor sexual offense or a crime of violence shall not be allowed to work in buildings occupied by State Government employees.
- c) At any time has an outstanding warrant or a criminal charge for a crime described in (b) above shall not be allowed to work on State property.
- d) Vendor must ensure that all employees have a responsibility to self-report to Vendor within twenty-four (24) hours any arrest for any disqualifying offense. Vendor must notify the Contract Administrator within twenty-four (24) hours of all details concerning any reported arrest.
- e) Upon the request of the Contract Administrator, Vendor will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Contract.
- f) Vendor's responses to these background check requests shall be considered a continuing representation, and Vendor's failure to notify the State within thirty (30) days of any criminal charge, investigation, or proceeding involving Vendor or its then-current officers, directors or persons providing Services under this Contract during its term shall constitute a material breach of contract. The provisions of this paragraph shall also apply to any subcontractor utilized by Vendor to perform Services under this Contract.

4.9.3 BACKGROUND CHECK DOCUMENT REQUIREMENTS

Required background check documentation must be submitted to NCDST prior to Vendor performing any Services on State property, and it shall include:

- a) A cover letter by Vendor on company letterhead with a list of the full names matching a required government issued photo ID, addresses, and birth dates of each person representing the contracting company.
- b) Vendor shall also provide a photocopy of the required State or Federal government issued picture ID or Driver License.
- c) A letter on company letterhead is not acceptable proof in itself but can be used to further clarify information on the criminal background check submitted. All documentation shall be submitted at the same time. Submit documents which are clear and legible.
- d) Background checks consisting of:
 - 1. Original unaltered criminal background check from the organization providing the background check.
 - 2. The background check provider's company name, company mailing address, and contact phone numbers.
 - 3. The full name of the individual, which matches the government issued photo ID.
 - 4. The current address of individual being checked.
 - 5. The date the criminal background check search was conducted.

4.9.4 VENDOR BACKGROUND CHECK AGREEMENT

Any personnel or agent of Vendor performing Services under any Contract arising from this RFP are required to undergo a background check at the expense of Vendor, as outlined in Section 4.9 above. Any such request by the State must be completed immediately/within ten (10) business days. When a background check is requested, personnel or agents may not perform services under this Contract until approved in writing by the State.

Vendor must respond to the below question and upload within Vendor's response in the Sourcing Tool.

For Vendor Completion:

Vendor agrees to conduct a background check per the specifications above in sections 4.9-4.9.4 on all employees proposed to perform Services under this Contract, at its expense, and provide the required documentation to the State in order to perform Services under this Contract:

☐ YES ☐ NO

4.10 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 proposal 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.

4.11 VENDOR'S REPRESENTATIONS

If Vendor's Proposal 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.

4.12 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

4.13 DATA SECURITY AND PAYMENT ACCEPTANCE REQUIREMENTS

With its offer submission, Vendor shall certify to the State, without exception, the below items. Failure to disclose and submit any of the following may result in disqualification of Vendor's proposal.

- a) The sufficiency of its security standards, tools, technologies, and procedures in providing Services under this Contract.
- b) That any Data Centers and Information Technology service component including but not limited to Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) solutions system(s) involving state data and used to provide the Services under this Contract have, and will maintain, a third party security assertion with a favorable opinion for the proposed Data Center or Information Technology system that is consistent with applicable information system risk level per the National Institute of Standards and Technology NIST 800-53 revision 4. The current and favorable third-party security assertions will be verified yearly, and the Vendor will be required to provide an updated report when the current has expired or, if there is a gap in the report period coverage, a bridge letter verifying that the Information system environment and functions have not changed since the last Security Assertion report was produced (bridge letter is an option only valid for three months after current third-party assertion expires).
- c) It is the State's preference for the Vendor to provide a full SOC2, Type 2 or a HITRUST third-party security assessment report. If the Vendor maintains that any information contained in such report is proprietary or otherwise confidential, the Vendor shall redact these portions of the report, and supply the un-redacted portions for review. Alternatively, the Vendor may submit an Opinion Letter from the third-party auditors that performed the assessment stating what assertion type was performed and completed with a favorable opinion for all Data Centers and Information Technology service components used/involved in the proposed services (i.e. IaaS, PaaS, and SaaS). All Data Centers and Information Technology component names and types shall be clearly defined and outlined.
- d) A third-party SOC2, Type 2 or HITRUST security assessment report is preferred, but assessment reports performed under other security frameworks will be considered as a substitute as long as the security controls can be cross-walked to the appropriate NIST-800-53 security control requirements and that the assessment is based on the system risk level involved under this Contract (e.g. ISO 27001, PCI-DSS). The State reserves the right to independently evaluate, audit, and verify such requirements, including requesting the performance of a penetration test and/or vulnerability scan or/and or a Vendor Readiness Assessment Report (VRAR) with satisfactory results. The Vendor shall include the full version of any substitute third party assessment report(s) as part of its submission. If the Vendor maintains that any information contained in such report(s) is proprietary or otherwise confidential, the Vendor shall redact these portions of the report, and supply the un-redacted portions for review. The Vendor shall supply a third-party security assertion for all Data Centers and Information Technology service components used/involved in the proposed services (i.e. IaaS, PaaS, and SaaS). The report shall clearly define the Data Centers and service type(s) included in the assertion.
- e) If the Vendor submits a substitute security framework, the State reserves the right to, based upon its evaluation, request that the Vendor provide a suitable amount of cyber breach liability insurance coverage and/or commit to obtaining a favorable security assessment within a specified time period as a condition of Contract award. The Vendor shall list the amount of cyber breach liability insurance that it currently carries for all Data Centers and Information Technology service components used/involved in the proposed services (i.e. IaaS, PaaS, and SaaS). If the Vendor is currently undergoing an assessment, the Vendor shall list the expected date for completion.

For Vendor Completion

Vendor certifies the sufficiency of its security standards, tools, technologies, including any electronic system used in the collection of payments from winning Bidders, in providing Services under this Contract, AND the above listed items.

YES _____ NO _____

For Vendor Completion

Vendor shall provide to the State a point of contact in obtaining the above related items.

Name: _____

Title: _____

Phone: _____

Email Address: _____

4.14 CAPABILITIES OF VENDOR AUCTION WEBSITE AND SYSTEM

Vendor's proposal response must clearly demonstrate the capabilities of its Auction Website and System to provide the following services:

- Ability of use on desktop, tablets, and mobile devices with access and discoverability on multiple web browser platforms.
- Vendor's ability to allow for an integrated payment gateway that delivers buyer's payment safety and security during the transaction and accepts multiple methods of electronic payment.
- Vendor's ability to host, advertise, provide visibility, and access of the UPD's listings on a dedicated link that is uninterrupted, twenty-four hours per day, seven days per week basis during an active online auction.
- Vendor's ability to provide a dedicated, non-changing link that will go specifically to the current UPD Auction.
- Vendor's ability to include the UPD logo, and/or other agreed upon graphical elements.
- Vendor's ability to manage and maintain Auction Website, including ability to maintain a minimum uptime of 99%.
- Vendor's ability to allow for account creation and registration portals with robust security features providing protection during entry, transmission, and storage of the UPD and potential buyer information. Vendor's ability to require all bidders on the UPD's listings to be a registered bidder of the Auction Website prior to placing a bid on any UPD listing.
- Vendor's ability to prohibit any user that is not a registered bidder of the Auction Website from bidding on any UPD listing.
- Vendor's ability to confirm each registered bidder's eligibility to enter a legal contract to bid and purchase items offered on the Auction Website.
- Vendor's ability to allow UPD's secured access to:
 - a) Manage the UPD's user profile, including ability to update and modify the UPD's contact information and passwords. The right to add, delete, assign, and/or re-assign users' access to the Vendor's website.
 - b) Auction page as it will be viewed by prospective buyers at least 24 hours prior to the auction becoming live as well as current and historical access and reporting functionality in an MS format to the following:
 - Status of each Lot and/or Auction
 - View count and bid count per Lot and/or Auction
 - Gross and Net Sale price of each Lot and/or Auction
 - Vendor's commission amount per Lot and/or Auction
 - Purchaser's contact information per Lot and/or Auction
 - Ad-hoc reports, as requested.
- Vendor's ability to instantly download the UPD's listing data, including, but not limited to, sales information, bid history, list of non-winning bidders, winning bidder's mailing/shipping information, email address and other pertinent available contact information.
- Vendor's ability to keep and maintain in a current and auditable format all records related to UPD listings if requested by the UPD.

5.0 UNCLAIMED PROPERTY ONLINE AUCTIONS SCOPE OF WORK

5.1 RESPONSIBILITIES OF THE UPD

Within five (5) business days of award, the UPD will agree upon time where Vendor will be scheduled to begin the services or provide alternative dates to Vendor. The UPD shall perform the tasks listed below to complete the online auctioneering services for approximately 1,000 Lots over the initial three-year term located at 3200 Atlantic Avenue, Raleigh, NC 27604.

- a) Provide the Vendor with an assigned UPD auction number, TID, initial description, minimum bid, appraisal certificate, if available, for each Lot to be sold.
- b) Provide the Vendor with a scheduled and escorted access to the eligible Lots for sale located at the address identified above.
- c) Annually approve a marketing and advertising plan related to the sale of its Lots, as well as an annual on-line auction schedule, as outlined below in Section 5.2.
- d) Provide Vendor with UPD terms and conditions of sale.
- e) Approve all Vendor pictures, minimum bid starting price, and Lot eligibility prior to the start of any active online auction.
- f) Have the sole discretion to decide on any refunds or exchanges in rare circumstances. However, the UPD operates under an all items are to be SOLD AS IS, and there shall NOT be any refunds or exchanges, unless extreme mitigating circumstances to be approved at the sole discretion of the UPD.
- g) Be responsible for the shipment, to include the cost of shipment to the approved winning bidder of all Lots sold. Sold lots shall be shipped from the UPD, at the address listed above.
- h) Provide the Vendor with a point of contact for all sales related communications.

5.2 RESPONSIBILITIES OF THE VENDOR

Vendor shall provide a proposal response on how to accomplish the required tasks listed below, necessary to conduct and complete the on-line auctioneering services for approximately 1,000 Lots over the initial three-year term located at 3200 Atlantic Avenue, Raleigh, NC 27604.

- a) Vendor's proposed process/timeline in conducting online auction services to the UPD within the estimated 1,000 lots over the initial three-year term. Vendor must start the first active online auction within forty-five (45) calendar days of effective date and annually provide a schedule to include estimated number of Lots to be sold. Vendor must provide in its response projected time periods for being onsite, preparing auction sale, final review by the UPD, auction start date, auction award date, net proceeds and corresponding reports provided to the UPD.
- b) Vendor's proposed process of digitally photographing each Lot to create a high-resolution photo for clear online viewing. All photography shall be completed on-site at the address indicated above and Vendor shall always be accompanied by a UPD representative(s). Under no circumstances shall any Lots of property be removed from this location.
- c) Vendor's proposed process on how it shall create a written description for each Lot to be sold including those for which an appraisal certificate has been provided by the UPD. Vendor may utilize appraisal certificates provided by the UPD to aid in creating a description of a Lot.
- d) Vendor's proposed marketing and advertising plan for UPD auction services. The marketing plan must include an approach on how to maintain and/or increase web traffic on UPD online auctions. Vendor must include how many "bidders" on average each auction should garner based on Vendor's historical data and marketing strategies. The awarded vendor shall provide a marketing and advertising plan annually to the UPD to present plans to continue meeting auction sales and/or plans to increase auction sales.
- e) Vendor's proposed communications to bidders and buyers:
 - I. Vendor's proposed language required to be posted on Vendor website pertaining to Vendor's terms and conditions of sale.

- II. Vendor must include any proposed language regarding taxes, if applicable, that it intends to charge the buyer.
 - III. Vendor must include any proposed language regarding any additional fees, not including taxes, that it intends to charge the buyer that is not otherwise outlined in this proposal.
 - IV. Vendor's proposed communication regarding notifying the winning bidder and instructions for completion of the related transaction. Vendor shall be responsible for immediately notifying the winning bidder upon close of the auction.
 - V. UPD reserves the right to amend proposed terms and conditions and communications as outlined above.
- f) Vendor's proposed process on how to collect and report any local, state, federal, foreign taxes, if applicable, from buyer for each sale which shall be exclusive of the gross proceeds.
- g) Vendor's proposed online website access by UPD for online auctions, as outlined in Section 4.14 above and process of providing completed auction information to UPD. At the completion of the Auction, Vendor must at least provide the following to the UPD within a mutually agreed upon number of days, not to exceed 10 business days, from the date of a specified Completed Auction:
- I. An Excel file, via email, containing, at a minimum for each Lot sold in the specified Completed Auction: UPD assigned auction number, TID, and minimum amount, as well as a written description, gross proceeds, commission amount, net proceeds, and Vendor assigned auction identifier, if applicable.
 - II. A file, in mutually agreeable file format, containing the contact information of the purchasers of the Lots contained in the Excel file above (I.). The contact information should include, at a minimum: name, shipping address, email address, and phone number.
 - III. A PDF report of itemized sales data to include: TID associated with Lot sold, description of item sold, gross and net sale price per Lot, Vendor's commission per Lot, and sum total of auction gross proceeds, commissions, and net proceeds.
 - IV. Ad Hoc reports as needed to include historical auction data.
- h) Vendor's proposed process to remit net proceeds of Completed Auction by electronic funds transfer on or before the 10th business day of Completed Auction.

5.3 PROJECT ORGANIZATION

Vendor shall describe the organizational and operational structure it proposes to utilize for the work described in this RFP and identify the responsibilities to be assigned to each person Vendor proposes to staff the work.

6.0 CONTRACT ADMINISTRATION

All Contract Administration requirements are conditioned on an award resulting from this solicitation. This information is provided for Vendor's planning purposes.

6.1 CUSTOMER SERVICE AND POINTS OF CONTACT

Vendor shall provide to the UPD a dedicated account manager that is accessible by email and phone during NCDST's normal business hours, Monday through Friday, 8:00 a.m. through 5:00 p.m. (ET), that are able to respond within 24 hours to inquiries from the UPD.

Vendor shall be responsible for communicating with potential buyers/purchasers pertaining to items for sale or sold, reaching out to UPD as necessary for assistance in developing response to questions for which the Vendor is not able to answer.

Vendor shall designate and make available to the State a Contractual and Technical Point of Contact. Vendor shall list both a Contractual and Technical Point of Contact below. The State Technical Point of Contact shall be UPD point of contact for contract administration or interpretation, performance issues, scheduling, project review, and billing.

Contact by the Offeror with the persons shown below for contractual and technical matters related to this solicitation is only permitted if expressly agreed to by Elizabeth Cass, or upon award of contract.

Proposal Number: RFP 07-2023003

Vendor: _____

Vendor shall provide the UPD Contract Administrator with an updated current list of contact information with telephone numbers including a business office number, emergency contact number, a cell phone number, and an email address.

For Vendor Completion:

Vendor Contractual Point of Contact	Vendor Technical Point of Contact
Vendor: _____	Vendor: _____
Street Address: _____	Street Address: _____
City, State, Zip: _____	City, State, Zip: _____
Attn: _____	Attn: _____
Email: _____	Email: _____
Phone No.: _____	Phone No.: _____

Below is the State's Contractual and Technical Point of Contact.

State Contractual Point of Contact (Contract Manager)	State Technical Point of Contact (Contract Administrator)
North Carolina Department of State Treasurer Financial Operations Division Procurement & Contracting 3200 Atlantic Avenue Raleigh, NC 27604 Attn: Elizabeth Cass Email: Elizabeth.Cass@nctreasurer.com Phone No.: 919-814-3895 CC: Jessica Herrmann Jessica.Herrmann@nctreasurer.com	North Carolina Department of State Treasurer Office of the State Treasurer 3200 Atlantic Avenue Raleigh, NC 27604 Attn: Cathrine Mills Email: Cathrine.Mills@nctreasurer.com CC: MaryAnne Fitzpatrick Email: MaryAnne.Fitzpatrick@nctreasurer.com

6.2 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce complexity and build value in the services being provided. A continuous improvement effort consists of various ways to enhance business efficiency and effectiveness as performance progresses.

6.3 ACCEPTANCE OF WORK

In the event acceptance criteria for any Services, work or other deliverables is not described herein or in contract documents or work orders hereunder, the State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such Services, work or other 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 of the Services, or other deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, the State may exercise

any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

6.4 FAITHFUL PERFORMANCE

Any Contract may include terms ensuring a vendor's performance such as: (1) a bond, or similar assurance; (2) liquidated damages; (3) a percentage of the Contract value held as a retainage; (4) withholding final payment contingent on acceptance of the final deliverable; and (5) any other provision that assures performance of the Vendor.

For non-performance issues regarding Contract obligations under this Contract, the Parties agree that calculation of actual damages resulting from a failure to adhere to Contract requirements is extremely difficult, if not impossible, to calculate accurately, and that \$100.00 per infraction per day is a reasonable estimate of damages. Therefore, the Parties agree that Vendor shall pay as liquidated damages and not as a penalty the sum of \$100.00 per infraction per day, unless waived by the UPD.

This remedy shall be exercised at UPD's sole discretion and shall not limit UPD's other available remedies under this Contract or any applicable law. UPD shall notify Vendor of its intention to levy liquidated damages for non-compliance in writing ten (10) calendar days prior to levying the liquidated damages. The UPD will notify the Vendor of any liquidated damages assessed and the Vendor shall make payment to the UPD within thirty (30) calendar days of the date of notice.

6.5 DISPUTE RESOLUTION

During the performance of the Contract, the parties agree that it is in their mutual interest to resolve disputes informally, and in a timely manner. Any claims by the Vendor shall be submitted in writing to the State's Technical Point of Contact for resolution. Any claims by the State shall be submitted in writing to the Vendor's Technical Point of Contact 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 done through the State Contractual Point of Contact(s) (Contract Manager) listed in Section 6.1 above.

The remainder of this page is intentionally left blank.

Attachments to this RFP begin on the next page.

ATTACHMENT A: PRICING

This is an Agency Specific Term Contract. The UPD does not guarantee any maximum or minimum amounts of Lots or dollar value of Lots against this Contract. The lowest cost shall be determined by the average percentage per lot of Table 1, 2, and 3. Vendor shall consider administrative costs, understanding some items may need to be presented for sale several times prior to a successful sale. Some items may not sell. Vendor will not be compensated until the Lot is sold as the proceeds come from the sale of the Lot. Vendor shall not charge, and the State will not pay more than the quoted percentage of the gross proceeds received from the sale of each Lot of property sold.

Vendor shall complete Table 1, Table 2, and Table 3, where indicated, but shall not otherwise alter the appearance or content thereof. Failure to adhere to this instruction may result in rejection of Vendor's proposal response.

For Completion by Vendor:**Table 1: (Representing Year One. For Lowest Cost Evaluation.)**

Item #	DESCRIPTION	Commission Rate (Percentage of Gross Proceeds Per Lot)
1	Vendor's percentage of the gross proceeds received from the sale of each Lot of property sold.	% _____

Table 2: (Representing Year Two. For Lowest Cost Evaluation.)

Item #	DESCRIPTION	Commission Rate (Percentage of Gross Proceeds Per Lot)
1	Vendor's percentage of the gross proceeds received from the sale of each Lot of property sold.	% _____

Table 3: (Representing Year Three. For Lowest Cost Evaluation.)

Item #	DESCRIPTION	Commission Rate (Percentage of Gross Proceeds Per Lot)
1	Vendor's percentage of the gross proceeds received from the sale of each Lot of property sold.	% _____

Average Percentage of Table 1, 2,3 (For Lowest Cost Evaluation): % _____

ATTACHMENT B: NORTH CAROLINA INSTRUCTIONS TO VENDORS

I. READ, REVIEW AND COMPLY

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

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

II. REQUEST FOR OFFERS

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 bids at any time if such rejection is deemed to be in the best interest of the State.

By submitting Your Bid or Proposal, You are offering to enter into a contract with the State.

The Contract is a separate document that represents the Vendor's and the State's entire agreement. If Your bid is accepted and results in a Contract, You will be expected to accept the North Carolina General Terms And Conditions included in the Solicitation document as part of the Contract. Depending upon the good or service being offered, other terms and conditions may apply.

III. DUTY TO INQUIRE

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

IV. DEFINITIONS, ACRONYMS AND ABBREVIATIONS

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

1. **ADDENDUM:** a document issued to supplement or modify the original Solicitation document. Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope changes to the Solicitation.
2. **AGENCY SPECIFIC TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities for a single entity.
3. **APPRAISAL:** An informal inspection, identification, and valuation of property.
4. **APPRAISAL CERTIFICATE:** A formal document prepared by Vendor and signed by the Vendor setting forth the Vendor's professional opinion as to the detailed description and Fair Market Value of an item.
5. **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency.
6. **BUYER:** The employee of the State or Other Eligible Entity that places an order with the Vendor.
7. **COMPLETED AUCTION:** An auction for which the proceeds have been received by the Vendor from the purchaser(s), for all items in the auction.
8. **CONTRACT:** A Contract resulting from or arising out of Vendor responses to this Solicitation.
9. **CONTRACT ADMINISTRATOR:** Representatives of the Vendor and the Department who shall administer the contract after award, as identified in Section 6.1.
10. **CONTRACT MANAGER:** Representative of the North Carolina Department of State Treasurer identified in Section 6.1 who will correspond with potential Vendors concerning solicitation issues and will oversee the award of the contract with the Vendor providing the best offer to the State.
11. **COINS AND CURRENCY:** Metal or paper medium of exchange authorized by a government for use as money. May include current or past circulation, and of both foreign and domestic type.

12. **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.
13. **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns the commodity in transit and files any claims. Vendor pays all freight and any related transportation charges. A Solicitation may request that a Vendor separately identify freight charges in its bid, but no amount or charge not included as part of the total bid price will be paid.
14. **GEMSTONES:** Precious or semiprecious stones, generally cut, polished, and used in a piece of jewelry.
15. **HUB:** Historically Underutilized Business <https://ncadmin.nc.gov/businesses/hub>
16. **JEWELRY:** Personal ornaments that are typically made from or contain jewels and precious metal, including but not limited to, necklaces, rings, or bracelets.
17. **LOT:** A grouping of similar products within this Solicitation document.
18. **MISCELLANEOUS PROPERTY:** Collectible items including, but not limited to, watches, stamp collections, knives, figurines, flatware, baseball cards and other sports memorabilia, autographs, and historical documents.
19. **NCDST:** The North Carolina Department of State Treasurer
20. **PRECIOUS METALS:** Classification of metals, such as gold, silver, platinum, and palladium, which are considered to be rare and/or have a high economic value.
21. **QUALIFIED PROPOSAL:** A responsive proposal response submitted by a responsible Vendor.
22. **OFFER:** the bid or proposal submitted in response this Solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
23. **OFFEROR:** the single legal entity submitting the Offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.
24. **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
25. **RESPONSIBLE:** Refers to a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
26. **RESPONSIVE:** Refers to an Offer that conforms to the Requirements of the Solicitation in all respects to be considered by the State for award.
27. **RFP:** Request for Proposals (a type of Solicitation document)
28. **SERVICES:** The tasks and duties undertaken by the Vendor to fulfill the requirements and specifications of this solicitation.
29. **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
30. **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, institutions, boards, commissions, universities, and units of the State.
31. **STATE DEPARTMENTS:** Department of Administration, Department of Agriculture and Consumer Services, Department of Commerce, Department of Natural and Cultural Resources, Department of Environmental Quality, Department of Health and Human Services, Department of Information Technology, Department of Insurance, Department of Justice, Department of Labor, Department of Military and Veteran Affairs, Department of Public Instruction, Department of Public Safety, Department of Revenue, Department of State Treasurer, Office of the Secretary of the State, Department of Transportation, Wildlife Resources Commission, Office of Budget and Management, Office of the Governor, Office of the Lieutenant Governor, Office of The State Auditor, Office of the State Controller.
32. **TID:** Tangible Identification Number. A unique identifying number assigned by the State to a Lot.
33. **THE CONTRACT:** A contract resulting from or arising out of Vendor responses to this solicitation document.
34. **UPD:** Unclaimed Property Division.
35. **VENDOR:** The supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity

submitting a response to a Solicitation document. Following award of a contract, the term refers to an entity receiving such an award.

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

37. **YOU and YOUR:** Offeror.

V. INTERPRETATION OF TERMS AND PHRASES

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

VI. BID SUBMISSION

1. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its bid the name, address, and telephone number of the person(s) with authority to bind the Vendor and answer questions or provide clarification concerning the Vendor's bid.
2. **SIGNING YOUR OFFER:** Every Offer must be signed by an individual with actual authority to bind the Offeror.
 - a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm.
 - b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner.
 - c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign.
 - d) An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant.
 - e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.
3. **EXECUTION:** Failure to sign the Execution Page (numbered page 1 of the Solicitation document) in the indicated space may render an Offer nonresponsive, and it may be rejected.
4. **STATE OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal government processes so that Offers cannot be received at the State office designated for receipt of bids by the exact time specified in the Solicitation, the time specified for receipt of Offers will be deemed to be extended to the same time of day specified in the Solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Addendum may be issued to reschedule the bid opening. If State offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Addendum will be issued to reschedule the conference.
5. **BID IN ENGLISH and DOLLARS:** Offers submitted in response to this Solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.
6. **LATE BIDS:** Late bids, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.
 - a) Vendor shall bear the risk for late submission due to unintended or unanticipated delay— whether submitted electronically, delivered by hand, U.S. Postal Service, courier or other delivery service. It is the Vendor's sole responsibility to ensure that its bid has been received by this Office by the specified time and date of opening. The date and time of submission will be marked on each bid when received, and any bid received after the bid submission deadline will be rejected.

- b) For proposals 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 proposals 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 proposal deadline. All Vendors are urged to take the possibility of delay into account when submitting a proposal by U.S. Postal Service, courier, or other delivery service.
7. **DETERMINATION OF RESPONSIVENESS:** Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer.
8. **CONTENTS OF OFFER:**
- a) Offers should be complete and carefully worded and should convey all of the information requested.
- b) Offers should be prepared simply and economically, providing a straightforward, concise description of the Offeror's capabilities to satisfy the requirements of the Solicitation. Emphasis should be on completeness and clarity of content.
- c) If Your Offer includes any comment over and above the specific information requested in the Solicitation, You are to include this information as a separate appendix to Your Offer. Offers which include either modifications to any of the Solicitation's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award at the State's discretion.
9. **MULTIPLE OFFERS.** If specifically stated in the Solicitation document, Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements.
10. **CLARIFICATION:** The State may elect to communicate with You after bid opening for the purpose of clarifying either Your Offer or the requirements of the Solicitation. Such communications may be conducted only with Offerors who have submitted an Offer which obviously conforms in all material aspects to the Solicitation. Clarification of an Offer must be documented in writing and included with the Offer. Clarifications may not be used to revise an Offer or the Solicitation.
11. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded. Regardless of error or omission, a Vendor shall not be permitted to increase its pricing after the deadline for submitting bids.
12. **BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, the State reserves the right to reject any and all Offers, in whole or in part, by deeming the Offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this Solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to the State, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of the State.
13. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested in the Solicitation document. Further, if required elsewhere in this bid, each Vendor shall submit with its bid any sketches, descriptive literature, and/or complete specifications covering the goods and services offered. Reference to literature submitted with a previous bid or available elsewhere will not satisfy this provision. **Do not submit bid samples or descriptive literature unless expressly requested.** Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the Solicitation. Failure to comply with these requirements shall constitute sufficient cause to reject a bid without further consideration.
14. **WITHDRAWAL OF BID OR PROPOSAL:** Proposals submitted electronically may be withdrawn at any time prior to the date for bid opening identified on the cover page of this Solicitation document (or such later date included in an Addendum). Proposals that have been delivered by hand, U.S. Postal Service, courier, or other delivery service may be withdrawn **only** in writing and if receipt is acknowledged by the office issuing the Solicitation document prior to the time for opening identified on the cover page of the Solicitation document (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after bid opening shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.
15. **COST FOR BID OR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting Offers are the Vendor's sole responsibility.

16. **INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, at a reasonable time, the equipment, item, plant, or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the State's determination that such equipment, item, plant, or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
17. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
18. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of Contract award, each out-of-State Vendor that is a corporation, limited-liability company, or limited-liability partnership shall have received, and shall maintain throughout the term of The Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.
19. **SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit Your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:
- a) If paper copies are requested, all copies of the bid are printed double sided. All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
 - b) Unless absolutely necessary, all bids and copies should minimize or eliminate use of non- recyclable or non- reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three- ringed binders, glued materials, paper clips, and staples are acceptable.
 - c) Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
20. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUB):** The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts.
21. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying a percentage increase to the price of any bid from a North Carolina resident Vendor. To the extent another state does so, North Carolina applies the same percentage increase to the bid of a Vendor resident in that state. Residency is determined by a Vendor's "Principal Place of Business," defined as that principal place from which the overall trade or business of the Vendor is directed or managed.
22. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State:
- a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and
 - b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81.
- A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void ab initio.*
23. **VALID TAXPAYER INFORMATION:** All persons or entities desiring to do business with the State must provide correct taxpayer information on North Carolina specified forms. The Substitute W-9 and Instructions are here:
https://files.nc.gov/ncosc/documents/NCAS_forms/State_of_North_Carolina_Sub_W-9_01292019.pdf
24. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina

electronic Vendor Portal (eVP) allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities available as well as notifications of status changes to those Solicitations. Online registration and other purchasing information is available at the following website:

<https://evp.nc.gov>.

25. The status of a Vendor's E-Procurement Services account(s) shall be considered a relevant factor in determining whether to approve the award of a Contract resulting from this Solicitation document. Any Vendor with an E-Procurement Services account that is in arrears by 91 days or more at the time of bid opening may be suspended or deactivated, at the State's discretion, and may be disqualified from further evaluation or consideration.
26. **TABULATIONS:** Bid tabulations can be electronically retrieved at the Electronic Vendor Portal (eVP), <https://evp.nc.gov>. Tabulations will normally be available at this web site not later than one working day after the bid opening. If negotiation is anticipated under 01 NCAC 05B.0503, pricing may not be public until award. Lengthy or complex tabulations may be summarized, with other details not made available on eVP. Requests for additional details or information concerning such tabulations cannot be honored.
27. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in bids that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
28. **COMMUNICATIONS BY VENDORS:** In submitting its bid, the Vendor agrees not to discuss or otherwise reveal the contents of its bid to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this Solicitation. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the Solicitation, during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the Solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's bid and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this Solicitation. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the using agency or issuing agency authorized by this Solicitation are permitted.
29. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in writing in this Solicitation document and in formal Addenda.
30. **PROTEST PROCEDURES:** When a Vendor wishes to protest a contract awarded by the Division of Purchase and Contract or awarded by an agency when the award amount exceeds the agency's general delegation and the contract is not subject to a special delegation or exemption, a Vendor shall submit a written request addressed to the State Purchasing Officer at: Division of Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305.

When a Vendor wishes to protest a contract awarded by an agency when the award amount is less than an agency's general delegation or when the contract is subject to a special delegation or exemption the Vendor shall submit a written request to protest to the purchasing officer of the agency that issued the award.

The protest request must be received in the proper office within thirty (30) consecutive calendar days from the date of the Contract award. Protest letters shall contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims.

Note: Contract award notices are sent only to the Vendor actually awarded the contract, and not to every person or firm responding to a Solicitation. Award notices are posted on eVP at <https://evp.nc.gov>. All protests will be handled pursuant to the North Carolina Administrative Code, 01 NCAC 05B .1519.

31. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this Solicitation or those in any resulting

Contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this Solicitation document, including any negotiated terms, (2) requirements and specifications and administration, (3) North Carolina General Terms and Conditions in North Carolina General Terms And Conditions, (4) Instructions To Vendors, (5) Pricing, and (6) Vendor's Bid.

32. **ADDENDA:** Critical updated information may be included in Addenda to the Solicitation. It is important that all Vendors bidding on the Solicitation periodically check for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in the Solicitation document and all Addenda thereto. Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued concerning the Solicitation.
33. **ORAL EXPLANATIONS NON-BINDING:** Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a Solicitation will be furnished promptly to all other prospective Offerors as an Addendum to the Solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. See clause herein entitled "Duty to Inquire." The State will not identify You in its answer to Your question.
34. **MAXIMUM COMPETITION:** The State seeks to permit the maximum practicable competition. Offerors are urged to advise the State, as soon as possible, regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. If the State determines that any changes will be made resulting from the questions asked, then such decisions will be communicated in the form of an Addendum.
35. **FIRM OFFER:** Vendor's bid shall constitute a firm offer. By execution and delivery of a bid in response to a Solicitation, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposefully or inadvertently, shall have no force or effect, and will be disregarded. Any bid that contains language that indicates the bid is non-binding or subject to further negotiation before a contractual document may be signed shall be rejected.

ATTACHMENT C: 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 take into account 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: Any and 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) The Vendor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- h) The Vendor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- i) 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- j) 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 by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, 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.
- k) 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.
- l) 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.

- m) The Vendor further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Vendor debarred from, or who has not demonstrated eligibility for, Government Contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Vendor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part any relevant grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Vendor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Vendor; and refer the case to the Department of Justice for appropriate legal proceedings.

9. **PAYMENT TERMS:** Payment terms are net 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: 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 the 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.

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. 143B- 1379. 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. 143- 59.4.

- 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 consistent 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 in excess of 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 therefor 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 principals (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 non- Federal 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

Historically Underutilized Businesses (HUBs) consist of minority, women, and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) from one of these categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

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

The Vendor shall respond to questions below, as applicable.

PART I: HUB CERTIFICATION**For Vendor Completion:**

Is Vendor a NC-certified HUB entity?

☐ YES ☐ NO

If **yes**, provide Vendor #: _____

If **no**, does Vendor qualify for certification as HUB? Yes ☐ No ☐

Vendors that check "yes" will be referred to the HUB Office for assistance in acquiring certification.

PART II: PROCUREMENT OF GOODS - SUPPLIERS

For *Goods* procurements, are you using Tier 2 suppliers? Yes ☐ No ☐

If **yes**, then provide the following information:

Company Name	Company Address	Website Address	Contact Name	Contact Email	Contact Phone	NC HUB certified?	Percent of total bid price

Need more information?

Questions concerning the completion of this form should be presented during the Q&A period through the process defined in the Solicitation document.

Questions concerning NC HUB certification, contact the North Carolina Office of Historically Underutilized Businesses at 984-236-0130 or huboffice.doa@doa.nc.gov

ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with NC General Statute G.S. 143-59.4, Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of The Contract.

For Vendor Completion, Vendor shall complete items 1 and 2 below:

1. Will any work under this Contract be performed outside of the United States?

☐ YES ☐ NO

If "YES":

a) List the location(s) outside of the United States where work under the Contract will be performed by the Vendor, any subcontractors, employees, or any other persons performing work under the Contract.

b) Specify the manner in which the resources or workers will be utilized:

2. Where within the United States will work be performed?

NOTES:

1. The State will evaluate the additional risks, costs, and other factors associated with the utilization of workers outside of the United States prior to making an award.
2. Vendor shall provide notice in writing to the State of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under the Contract to a location outside of the United States.
3. All Vendor or subcontractor personnel providing call or contact center services to the State of North Carolina under the Contract **shall disclose** to inbound callers the location from which the call or contact center services are being provided.

ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION

For Vendor Completion:

Vendor must check all applicable boxes below:

- ☐ The Vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.
- ☐ Date of latest audit: _____ (If no audit within past 18 months, explain reason below.)
- ☐ The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.
- ☐ The Vendor is current in all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.
- ☐ The Vendor is not the subject of any current litigation or findings of noncompliance under federal or state law.
- ☐ The Vendor has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.
- ☐ He or she is authorized to make the foregoing statements on behalf of the Vendor.

For Vendor Completion:

If any one or more of the above boxes is NOT checked, Vendor shall explain the reason(s) in the space below. Failure to include an explanation may result in Vendor being deemed non-responsive and its submission rejected in its entirety.

The undersigned hereby certifies that the representations above is correct for the Certification for Financial Condition of the Vendor. Further, Vendor certifies this is a continuing certification and Vendor shall notify the NCDST within 30 days of any material change to any of the representations made herein.

Signature

Date

Printed Name

Title

[This Certification must be signed by an individual authorized to speak for the Vendor]