

Marketing & Communications

Request for Proposals

Mandatory Pre-Proposal Scope of Services Meeting

May 15, 2025

2:00 p.m. to 3:00 p.m. EDT

Online via Web Conference

Proposal Due Date

June 25, 2025 (4:00 p.m. EDT)

Physical Delivery Address

North Carolina Turnpike Authority
2501 Aerial Center Pkwy, Suite 200
Morrisville, NC 27560
Attn: Eliza Davis

Issue Date: April 15, 2025

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Appendices

Appendix A: North Carolina Turnpike Authority Policies and Procedures for the Procurement of Commodities and Services

Part I. Administrative

1. Notice of Request for Proposals

TITLE: Marketing & Communications Request for Proposals

ISSUING DATE: April 15, 2025

ISSUING AGENCY: North Carolina Turnpike Authority

CONTACT PERSON: Eliza Davis

1.1. Background and Purpose

The **N.C. Turnpike Authority** (NCTA) is seeking proposals from qualified Proposers to provide full-service marketing, communications and advertising services to support NCTA's various marketing, outreach and education programs. NCTA, a business unit of the **N.C. Department of Transportation** (NCDOT), was formed in 2002 by the North Carolina General Assembly. The mission of NCTA is to supplement the traditional non-toll transportation system by accelerating the delivery of roadway projects using alternative financing options and facilitating the development, delivery and operation of toll roads.

NCTA operates approximately 54 miles of tolled expressway facilities on the North Carolina state highway network, including the Triangle Expressway near Raleigh and the Monroe Expressway near Charlotte. In addition, NCTA's toll collection program also provides back-office toll transaction processing and customer service for the I-77 Express Lanes in Charlotte, an NCDOT public-private partnership project. In addition, there are several toll projects under construction or development in North Carolina, including I-485 Express Lanes, Complete 540 Phase II (an extension of the Triangle Expressway), the Mid-Currituck Bridge, US-74 Express Lanes, and I-77 Express Lanes South.

NCTA's administrative and project development work is performed by professional teams comprised of NCTA staff, NCDOT staff, and consultants. This arrangement provides management oversight while assuring that necessary expertise is available when needed to advance projects in an efficient and timely manner. NCTA has primary responsibility for this Request for Proposals (RFP) process including defining the requirements addressed in this RFP, the evaluation of the Proposals submitted by Proposers, and execution and oversight of the Contract.

1.1.1. Contractor Responsibilities for this Project

NCTA Communications and Marketing Program

The primary role of the Contractor will be to identify, recommend and facilitate the optimum use of paid advertising media, write and develop public relations strategies and content, provide graphic design support, social media management, multimedia development and facilitation, customer and neighbor outreach strategy and facilitation, as well as project management for the many communications and marketing campaigns that pertain to the NC Quick Pass brand and all NCTA projects. The Contractor is expected to maximize the impact of a limited marketing budget. The Contractor will also assist NCTA with updating its Communications Plan and develop communication scenarios for operations and crisis response management scenarios.

NC Quick Pass App and Website Project Management

In addition to traditional marketing and communications support, the Contractor will be responsible for representing customer experience priorities when interacting or coordinating with NCTA or other vendors regarding the NC Quick Pass [iOS](#) and [Android](#) app and [ncquickpass.com](#). Responsibilities include tracking of app and website improvements, write and develop content, coordinate website user-interface and user-experience strategies, independent verification and validation of the website and app, strategize on Search Engine Optimization improvements for the website, respond and post emergency updates on the website and maintain the NC Quick Pass App Store and Google Play Store pages.

Customer and Neighbor Outreach Strategy and Facilitation

The Contractor will also be responsible for strategy and facilitation of NCTA and NC Quick Pass outreach efforts. Examples of NCTA events include neighborhood meetings, public meetings, outreach presentations and toll-project ceremonies. NC Quick Pass events include events such as NC Quick Pass outreach tabling events and outreach presentations.

Specific areas of services required, include but are not limited to: strategic planning and research, project management and documentation, external partner coordination, event marketing and communications efforts, inventory management, transponder sales and Account maintenance, customer responses, event attendance and execution of day-of event tasks.

Additional Support

The Contractor shall be involved primarily with large scale projects with far reaching impacts. The frequency and scope of various marketing campaigns will be determined according to NCTA's priorities, objectives and resources at the time and will change over the course of the contract.

Specific areas of services required, include but are not limited to: public communications planning and implementation including crisis response management, marketing and advertising services, marketing and media research, media planning and placement, preparation of related media communications and collateral materials, preparation of audio/video presentations and project planning coordination and implementation, public relations support, graphic design services and website and application development, social media management and development, internal communications support as well as other related work. Work efforts may include the development of marketing plans for NCTA branding, and NC Quick Pass branding.

1.2. NCTA Toll Program

NCTA operates and manages the [NC Quick Pass](#) brand utilized for all toll facilities in North Carolina and provides toll collection and customer service.

NC Quick Pass Accounts

As of January 2025, there are more than **657,000** active NC Quick Pass Accounts. NC Quick Pass Account holders have multiple options to fit their travel needs, including paying tolls in 19 other states. NC Quick Pass Account holders receive a **50% discount** on North Carolina toll facilities.

Toll Invoice

Customers traveling toll roads in North Carolina without an NC Quick Pass Account (or interoperable account) are invoiced at a higher toll rate through the mail. The registered owner of the vehicle is identified by license plate, and an invoice is mailed to the address registered with the [N.C. Division of Motor Vehicles](#)

(NCDMV). If the bill is not paid within thirty (30) days from the date of the invoice, the vehicle's registered owner could incur fees, civil penalties, DMV registration holds and be turned over to a collection agency.

1.3. NCTA Contact Person

Eliza Davis is the contact person on this RFP. Any questions in regard to this RFP shall be directed in writing to NCTA_MktgComms_RFP@ncdot.gov.

1.4. Information Posting

It is the responsibility of all prospective Proposers interested in responding to this RFP to routinely check the NCTA website at <https://connect.ncdot.gov/business/turnpike> or the NC eVP website at <https://evp.nc.gov/solicitations/> for any revisions, question responses, Addenda, and changes to schedule and announcements related to this RFP. NCTA also will develop an email distribution list of contact persons for those Proposers who attend the mandatory Pre-Proposal Scope of Services Meeting and will email this additional information to such contact persons; however, this does not relieve Proposers of the responsibility to be aware of all additional information related to this RFP posted via the websites. NCTA and NCDOT grant permission to use its logo on Proposal Submittals.

2. General Information

2.1. RFP Inquiries and Notices

Any questions regarding this RFP shall be directed in writing via email to the contact person identified in **Part I, Section 1.3**. Only inquiries in writing will be accepted by NCTA, and only written responses will be binding upon NCTA.

Any inquiries received after the deadline referenced in **Table I-1: Procurement Schedule** may or may not be answered by NCTA at NCTA's sole determination. All answers to inquiries will be posted on the NCTA website at <https://connect.ncdot.gov/business/turnpike> and the NC eVP website at <https://evp.nc.gov/solicitations/>.

Question submittals should include a reference to the applicable RFP section and be submitted in a format shown below:

Reference	Proposer Question
RFP Section, Page Number	Proposer question ...?

2.2. Policy Statement

This procurement shall be conducted in accordance with all applicable Federal and State laws and regulations, and the policies and procedures of NCTA, as those may be amended. All future amendments to any such laws, regulations and applicable NCTA policies and procedures shall be applicable to this

procurement. See **Appendix A: North Carolina Turnpike Authority Policies and Procedures for the Procurement of Commodities and Services (February 2009)**.

2.3. Prohibited Communications During Evaluation

During the evaluation period, from the date Proposals are opened through the date the contract is awarded, each Proposer submitting a Proposal (including its representatives, sub-Contractors and/or suppliers) is prohibited from having any communications with any person inside or outside NCTA, any other government agency office, or body (including NCDOT, department secretary, agency head, members of the general assembly and/or governor's office), or private entity, if the communication refers to the content of the Proposer's Proposal or qualifications, the contents of another Proposer's Proposal, another Proposer's qualifications or ability to perform the 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 and/or the award of the contract. A Proposer not in compliance with this provision shall be disqualified from contract award, unless it is determined in NCTA's discretion that the communication was harmless, that it was made without intent to influence and that the best interest of NCTA would not be served by the disqualification. A Proposer's Proposal may be disqualified if its Sub-Contractor and supplier engage in any of the foregoing communications during the time that the procurement is active (i.e., the issuance date of the procurement to the date of contract award). Only those discussions, communications or transmittals of information authorized or initiated by NCTA for this RFP or general inquiries directed to the NCTA contact person in writing regarding requirements of the RFP (prior to Proposal submission) or the status of the Contract award (after submission) are excepted from this provision.

2.4. Cost Incurred Responsibility

All costs incurred by any interested party in responding to this RFP shall be borne by such interested party. NCTA shall have no responsibility whatsoever for any associated direct or indirect costs.

2.5. Right to Reject

NCTA retains the right and option to reject any and all Proposals.

2.6. Responsiveness of Proposals

NCTA reserves the right to reject any Proposal as non-responsive if the Proposal fails to include any of the required information in the specified order, as further detailed in **Part IV, Proposal Content**.

2.7. Right to Cancel

NCTA reserves the right to cancel this RFP if it is determined to be in the best interest of NCTA to do so.

2.8. Right to Amend and Addenda

NCTA reserves the right to amend, insert, or delete any item in this RFP if it is determined to be in the best interest of NCTA. If it becomes necessary to revise any part of this RFP, a written Addendum to the solicitation will be sent via email to the RFP email list and will be posted to NCTA's website in accordance with **Part I, Section 1.4**. NCTA will not be bound by, and the Proposer shall not rely on, any oral or written

communication or representation regarding the RFP documents, except to the extent that it is contained in an Addendum to these RFP documents or in the questions and answers as posted on the NCTA website. In the case of a conflict between Addenda the latest Addendum shall apply.

2.9. Written Clarifications

NCTA may request written clarifications to Proposals. NCTA will identify in its request the due date for response. If the requested information is not received by the due date for response, the Proposer's scores may be adversely affected.

2.10. Oral and Referenced Explanations

NCTA will not be bound by oral explanations or instructions given by anyone at any time during the Proposal process or after Contract award. NCTA will not consider Proposer referenced information not included in the Proposal; however, NCTA may consider other sources in the evaluation of Proposals, such as reference reviews, financial ratings and Proposer oral presentations, for example.

2.11. Oral Presentations and Interviews

NCTA reserves the right to request oral presentations and interviews with Proposers if NCTA decides that oral presentations and interviews are in its best interests. If oral presentations and interviews are used, NCTA will develop a shortlist for the oral presentations and interviews based on the scores of the Proposals. See **Part I, Section 4.2**, for more details.

In advance of any oral presentations and interviews, Proposers will be given detailed instructions on what the format and content of the presentation and interview will be, including what functionality, if any shall be demonstrated.

2.12. Proposal Submittal Deadline

Complete Proposals shall be delivered by mail or hand delivered to the NCTA Office presented on the cover page of this RFP, before the due date and time provided in **Table I-1: Procurement Schedule**, where they will be logged in as received. NCTA will not accept Proposals delivered after the due date and time.

2.13. Submittal Responsibility

The responsibility for submitting a Proposal to NCTA on or before the stated time and date will be solely and strictly the responsibility of the Proposer. NCTA will in no way be responsible for delays caused by the United States mail delivery, common carrier or caused by any other occurrence.

2.14. Waivers

NCTA may waive minor informalities or irregularities in Proposals received where such is merely a matter of form and not substance, and the correction or waiver of which is not prejudicial to other Proposers. Minor irregularities are defined as those that will not have an adverse effect on NCTA's interest and will not affect the price of the Proposals by giving a Proposer an advantage or benefit not enjoyed by other Proposers.

2.15. Modification or Withdrawal of Proposals

NCTA will permit modifications to a Proposal after Proposal Submittal until the specified due date and time for accepting Proposals provided in **Table I-1: Procurement Schedule**. The Proposal may be picked up by a representative of the Proposer provided that the request to modify is in writing, is executed by the Proposer or the Proposer's duly authorized representative and is submitted to NCTA. It is the Proposer's responsibility to resubmit a Proposal before the deadline in accordance with the instructions and requirements for Proposal submission detailed in this RFP.

A Proposer may withdraw a Proposal without prejudice prior to the Submittal deadline provided in **Table I-1**, provided that the request is submitted in writing to the contact person noted in **Part I, Section 1.3**, is executed by the Proposer or the Proposer's duly authorized representative and is submitted with NCTA.

2.16. Confidentiality and RFP Ownership

The North Carolina Turnpike Authority is a public agency of the State of North Carolina, subject to the North Carolina Public Records Act, Chapter 132 of the North Carolina General Statutes. NCTA may maintain confidential information, including any designated as trade secrets or otherwise proprietary, only in accordance with applicable Federal and State laws or regulations. NCTA, therefore, expects that Proposers will keep confidential information designations to a minimum. Any material labeled as confidential constitutes a representation by Proposer 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. Proposer are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.

Proposer, having formed a good faith opinion, upon consultation with legal or other knowledgeable advisors, that information submitted may contain a trade secret as defined in G.S. § 66-152 or other information exempted from the North Carolina Public Records Act pursuant to G.S. § 132-1.2, may so designate appropriate portions of Proposer Materials by marking the top and bottom of pages containing confidential information in boldface type "CONFIDENTIAL." NCTA, however, may serve only as a custodian of information a Proposer deems confidential. NCTA shall not act as an arbiter or defender of any claims related to assertions of confidential information. If a request is made for disclosure of information submitted, or an action is brought to compel NCTA to disclose information marked confidential pursuant to G.S. § 132-1 et seq. NCTA will notify the affected Proposer of such request or action.

In submitting Proposer Materials in response to this RFP, a Proposer agrees to: (i) defend its assertions of confidentiality by instituting appropriate legal proceedings, at its own expense and through its counsel, or intervening in an action brought against NCTA to compel disclosure, to defend its assertions of confidentiality; and (ii) hold the State and NCTA, and any officials or employees thereof harmless from any and all damages, costs, and attorney's fees awarded against the State and NCTA arising out of any such actions. Nothing in this section shall preclude the State or NCTA from participating in the defense of such actions, at its option and expense through its counsel. NCTA shall have no liability to a Proposer with respect to the disclosure of any information, including confidential information, subject to an order by a court of competent jurisdiction pursuant to G.S. § 132-9 or any other applicable law.

In accordance with G.S. § 136-28.5, bids and documents submitted in response to an advertisement or this RFP shall not be public record until the NCTA issues a decision to award or not to award the Contract.

2.17. Contractual Obligations

NCTA will not be required to evaluate or consider any additional terms and conditions submitted with a Proposal. This applies to any language appearing in or attached to the document as part of the Proposer's Proposal. By execution and delivery of this RFP and Proposal, the Proposer agrees that any additional terms and conditions or changes to the terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect unless such are specifically accepted by NCTA. Further, all exceptions must be taken in accordance with the instructions set forth in **Part IV, Section 1.1 Content of Proposal (G. Proposal Section 4)**.

2.18. Proposer's Bid

By submitting a Proposal to NCTA, the Proposer agrees that the Contractor's Proposal shall remain effective two hundred and forty (240) Calendar Days after the deadline for submitting the Proposal. If NCTA determines it is in the best interest, NCTA may request that Proposers extend the date through which the pricing is valid. Requests by NCTA for time extensions of pricing validity will not result in change to the prices as stated in the original Proposal unless so specified in the request to extend or subsequently agreed to by NCTA in writing.

2.19. Certificate to Transact Business in NC

As a condition of Contract award, each out-of-state Contractor 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.

2.20. Disadvantaged, Minority, Women Business Enterprises (Race and Gender Neutral) and Historically Underutilized Business

2.20.1. Policy

It is the policy of NCTA to comply with NCDOT's Disadvantaged Business Enterprises (DBE) Program and ensure that small businesses have an equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by federal and state funds. NCDOT sets DBE, Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) utilization goals for all construction projects. This Contract is not a construction contract and does not contain utilization goals. However, the Contractor is encouraged to give every opportunity to allow DBE/MBE/WBE Subcontractor participation on all contracts and supplemental agreements.

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 Contractors that are minority owned or have a strategic plan to support the State's Historically Underutilized Business (HUB) program by the utilization of diverse firms as 1st or 2nd tier Subcontractors.

2.20.2. Obligation

In compliance with Title VI, 23 CRF 200, 230, 635, 117(d) and (e) and 49 CFR Parts 21 and 26, the Proposer and Subcontractor shall not discriminate on the basis of race, religion, color, creed, national origin, age, disability or sex in the performance of this Contract. Failure by the Proposer to comply with these requirements is a material breach of this Contract, which will result in the termination of this Contract or such other remedy, as NCTA deems necessary.

2.20.3. Participation

Due to the Scope of Work and Requirements for this Contract, specific goals are not established. However, NCTA encourages the utilization of Small Professional Services Firms (SPSF) Subcontractors and/or suppliers on professional services contracts led by NCDOT. All DBE/MBE and WBE firms currently certified by the NCDOT Unified Certification Program (UCP) automatically qualify as a SPSF.

NCTA invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. If applicable, Proposers are required to complete **Exhibit A-5, HUB Supplemental Supplier Information** and include the completed form in the Proposal Section 5.

2.20.4. Subcontracting

The Contractor may subcontract the performance of required Services with other contractors or third-parties, or change Subcontractors, only with the prior written consent of NCTA. Contractor shall provide NCTA with complete copies of any agreements made by and between Contractor and all Subcontractors. The Contractor remains solely responsible for the performance of its Subcontractors. Subcontractors, if any, shall adhere to the same standards required of the Contractor. Any contracts made by the Contractor with a Subcontractor shall include an affirmative statement that NCTA is an intended third-party beneficiary of the contract; that the Subcontractor has no agreement with NCTA; and that NCTA shall be indemnified by the Contractor for any claim presented by the Subcontractor. Notwithstanding any other term herein, Contractor shall timely exercise its contractual remedies against any non-performing Subcontractor and, when appropriate, substitute another Subcontractor.

See form instructions for each requirement. For TIP, enter the "Type of Work"; for "Submitted by" enter Subcontractor name and name of person responsible for Subcontractor performance; for "Recommended by" enter name of prime Proposer and person responsible for delivery of Services. See instruction no. 7 on form. ***A Subcontractor Form RS-2 is required for all Subcontractors whether or not they are considered a SPSF entity.***

2.20.5. Directory of Approved Transportation Firms

For Subcontractors to be considered for SPSF utilization, a firm must be certified as SPSF and prequalified through North Carolina's Prequalification Unit. Real-time information about firms that are prequalified and Approved through North Carolina's Prequalification Unit, is available in the Directory of Firms. The Directory can be accessed at <https://www.ebs.nc.gov/VendorDirectory/default.html>.

2.20.6. Reporting Participation

When payments are made to Subcontractors, including material suppliers, firms at all levels (Contractor or Subcontractors) shall provide NCTA’s contract administrator (the addressee for invoices under this Contract) with an accounting of said payments. The accounting shall be listed on NCTA's Subcontractor Payment Information Form (Form DBE-IS). In the event the firm has no Subcontractor participation, the firm shall indicate this on the Form DBE-IS by entering the word 'none' or the number 'zero' and the form shall be signed. Form DBE-IS may be accessed on the NCDOT website at [https://connect.ncdot.gov/projects/planning/TransPlanManuals/MPO_Contractor%20_Payment_Form\(DBE-IS\).pdf](https://connect.ncdot.gov/projects/planning/TransPlanManuals/MPO_Contractor%20_Payment_Form(DBE-IS).pdf).

A responsible fiscal officer of the payee Firm, or Subcontractor, who can attest to the date and amount of the payments shall certify that the accounting is correct on the Form DBE-IS by affixing his/her signature. This information shall be submitted as part of the requests for payments made to NCTA.

2.21. Prevailing Wages

Contractor shall pay or cause to be paid to applicable workers employed by it or its Subcontractors to perform the Work not less than the prevailing rates of wages. Contractor shall comply and cause its Subcontractors to comply with all laws pertaining to prevailing wages. For the purpose of applying such laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). It is the Contractor’s sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Contract is in effect, Contractor shall bear the cost of such changes and shall have no claim against NCTA on account of such changes.

3. Schedule

Below, *Table I-1: Procurement Schedule* provides a planned schedule for this RFP process, listed in the order of occurrence. NCTA reserves the right to change any or all of these dates as it deems necessary or convenient in its discretion. In the event of such a date change, Proposers will be notified in accordance with **Part I, Section 1.4** outlined above.

Table I-1: Procurement Schedule

Event	Responsibility	Date and Time
Issue RFP	State	April 15, 2025
Mandatory Pre-Proposal Scope of Services Meeting	State	May 15, 2025 (2:00 p.m. to 3:00 p.m. EDT) <u>Interested parties are required to email the NCTA Contact Person to register for the meeting.</u> The meeting will be held online via web conference. The meeting may be recorded by NCTA and all attendees must state their company name so the company may be counted present. See further details below.

Event	Responsibility	Date and Time
Proposer Questions Due	Proposer	May 29, 2025 (4:00 p.m. EDT)
NCTA responds to Questions and Issues Addendum (if necessary)	State	June 12, 2025
Submit Proposals	Proposer	June 25, 2025 (4:00 p.m. EDT)
Notification of Proposers Shortlisted	State	July 28, 2025
Oral Interviews & Presentations with Shortlisted Proposers (if deemed necessary by NCTA) <i>(Shortlisted Proposers to be notified as to the specific schedule within the time identified)</i>	State	Week of August 11, 2025
Ranking of Shortlisted Proposers for Negotiations	State	August 22, 2025
BAFO (if needed)	State	Week of August 25, 2025
Contract Award	State	Week of August 25, 2025

Mandatory Pre-Proposal Scope of Services Meeting: NCTA will convene a **MANDATORY** Pre-Proposal **Virtual** Scope of Services meeting for interested firms on the date and time presented in **Table I-1** above. Interested parties are requested to email the NCTA Contact Person to receive additional information. NCTA has elected to host the meeting online via web conference only. The purpose of the meeting is to present details of the RFP, discuss the approach to the procurement, and provide attendees with an opportunity to ask questions about the RFP, the procurement approach, or NCTA requirements.

Attendance at the meeting is required for all Proposers who will submit Proposals for the Project.

4. Procurement Evaluation Process

An evaluation and negotiation process will be conducted as set forth in this Section 4 using a Best Value process to allow NCTA to award the Contract to the Proposer providing the Best Value and recognizing that Best Value may result in award to other than the lowest price or highest technically qualified Proposal. By using this method, the overall ranking may be adjusted up or down by the Evaluation Committee when considered with or traded-off against other non-price factors. "Best Value" procurement methods are authorized by G.S. §143-135.9 and in accordance with NCTA Policies and Procedures adopted by the NCTA Board February 18, 2009.

Pursuant to G.S. §143-135.9, 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 Contractor's offer; the Contractor's past performance; and the evaluated probability of performing the specifications stated in the solicitation on time, with high quality, and in manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" procurement is to enable Contractors 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 procurement.

4.1. Proposal Pass / Fail Screening

In response to this RFP, each Proposer shall submit a Proposal in strict compliance with the Requirements outlined herein. Immediately following the Proposal due date, as detailed in **Table I-1**, an NCTA representative shall validate the completeness of each Proposal, including all Proposal sections, correctly completed forms, and required information. Proposals which are incomplete may be rejected.

Note: Proposers are advised that NCTA is not obligated to ask for, or accept after the Proposal due date, data that is essential for a complete and thorough evaluation of the Proposal.

4.2. Proposal Evaluation

1. The evaluation process will consist of a quantitative scoring and ranking of the Proposals to ascertain which Proposer best meets NCTA's needs for the project. The Proposals will be evaluated on their material content and their responsiveness and degree of adherence to **Part III, Scope of Work and Requirements** set forth in this document. The Evaluation Committee will review and evaluate the Proposals and the other related Contract information submitted to ensure that the Proposer understands the Part III, Scope of Work and Requirements and has clearly expressed its intent to meet the Requirements of the Contract.
2. **Preliminary Proposal Scoring.** Following the Proposal review, the Evaluation Committee will score the Proposals with maximum potential score points for each Proposal as shown in **Table I-2** below.
3. **Non-Compliant or Shortlisted.** Any Proposals scored below 70 out of 100 possible total points on the preliminary evaluation will be considered non-compliant and will NOT be considered further. Only Proposers that meet the minimum score of 70 will be considered shortlisted and compliant and asked to move forward in the evaluation process.
4. **Oral Presentations and Interviews.** If NCTA decides that oral presentations and interviews are in its best interests, NCTA may invite shortlisted Proposers to participate in oral presentations and interviews. The oral presentations and interviews and any required demonstrations conducted therein will provide an opportunity for the Evaluation Committee to further its understanding of the Proposals.
5. **Updated Proposal Scoring.** After the oral presentations and interviews, the Evaluation Committee may update its preliminary proposal scoring. The updated scoring will consider both the Proposal and the results of the oral presentations and interviews and demonstrations if conducted, with maximum potential score points for each Proposal as shown in **Table I-2** below.

4.3. Proposal Scoring

The overall Proposals are scored as shown in *Table I-2* below:

Table I-2: Proposal Elements and Maximum Possible Points Breakdown

Item	Evaluation Criteria Description	% Weight	Max Points	Proposer Points	Final Proposer Score
1	Proposer demonstrated experience and qualification in performing the same or substantially similar service.	20	100		
2	Proposer demonstrated experience working as a collaborative partner and demonstrated a process to manage client communication and collaboration.	15	100		
3	Proposer demonstrated strategic planning, methodology for research, developing technical approach, campaign objectives, key messaging, audience, etc.	20	100		
4	Proposer demonstrated approach to define and report campaign successes and measurable results	10	100		
5	Proposer demonstrated out-of-the-box, creative and technological solutions relevant to the scope of services and can be deployed at NCTA	15	100		
6	Price (see below)	20	100		
<u>TOTAL SCORE</u>					

Item Scoring Formula:

- % Weight x Proposer Points = Final Proposer Score

Price:

- The Proposal with the lowest TOTAL cost for Samples of Work will receive a score of 100. All other competing Proposals will be assigned a portion of the maximum score using the formula:
 - $100 \times (\text{cost of the lowest total cost for Samples of Work} \div \text{total cost of Samples of Work being evaluated})$

- Note: Pricing for Samples of Work is to be provided in **Exhibit B**. See **Part IV, Section 1.1 (H. Proposal Section 5)** for further details on Samples of Work and Exhibit B.

4.4. Negotiations and Best and Final Offers (BAFOs)

NCTA reserves the right to negotiate with multiple Proposers concurrently or in serial at its sole discretion that are determined to be in a competitive range based upon the evaluation process described above. NCTA may select none, one, or more than one Proposer. Finalist Proposers may be requested to provide Best and Final Offers (BAFOs) in response. If BAFOs are requested, NCTA will evaluate the BAFOs and adjust its evaluation of the Proposer's respective Proposal accordingly. Further, should negotiations with one Proposer not be successful, NCTA reserves the right to negotiate with the next ranked Proposer or Proposers at NCTA's sole determination.

5. Award and Execution of Contract

5.1. Notice of Award

Following evaluation and negotiations, NCTA may execute a Contract with the successful Proposer. NCTA will notify the successful Proposer in writing via a Notification of Award letter via email.

NCTA will issue an original Contract for execution by the successful Proposer. After the Contract is executed by NCTA, a duplicate copy will be mailed back to the Contractor.

Originals. The original copy will be retained in the NCTA Office.

6. Proposer Debrief

Once a Contract has been awarded, all Proposers will be afforded the opportunity for a debriefing with NCTA regarding the relative merits of their Proposal submittal.

7. Protest Procedure

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights, and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive. These provisions are included in these RFP documents expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in these RFP documents, it shall indemnify, defend, and hold NCTA and NCDOT, and their respective Board members, directors, officials, employees, Agents, representative, and consultants, harmless from and against all liabilities, expenses, costs, fees, and damages incurred or suffered as a result of such Proposer actions. The submission of a Proposal shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

1. Any request for a protest meeting shall be in writing and filed with the NCTA Executive Director at the address specified below and shall be received within thirty (30) consecutive Calendar Days from

the date of the Contract award. Any protest not set forth in writing, including oral objections, is not a protest and shall be null and void.

North Carolina Turnpike Authority
2501 Aerial Center Pkwy, Suite 200
Morrisville, NC 27560

Attn: NCTA Executive Director

2. All protests shall include the following: 1) Name and Address of Protestor; 2) RFP Name and date of issuance; 3) Specific reasons for protest; and 4) Supporting exhibits, evidence, or documents to support the protest.
3. If the protest does not contain this information or if the Executive Director determines that a meeting would serve no purpose, the Executive Director may, within ten (10) consecutive Calendar Days from the date of receipt of the letter, respond in writing to the Proposer and refuse the protest meeting request.
4. If the protest meeting is granted, the Executive Director shall attempt to schedule the meeting within thirty (30) consecutive Calendar Days after receipt of the letter, or as soon as possible thereafter. Within ten (10) consecutive Calendar Days from the date of the protest meeting, the Executive Director shall respond to the Proposer in writing with the Executive Director's decision.
5. The Executive Director may appoint a designee to act on the Executive Director's behalf regarding these protest procedures.
6. Protest Submittal Requirements – See **Appendix A: North Carolina Turnpike Authority Policies and Procedures for the Procurement of Commodities and Services**.
7. All Proposals shall be irrevocable until the final administrative and judicial disposition of a protest.

Part II. Defined Terms & Acronyms

1. Defined Terms

Term	Definition
Account	A customer account in the NCTA CSC Commercial Back Office System (CBOS).
Addendum or Addenda	A document created to capture any clarification, update, amendment, addition, deletion or modification made to the RFP during the procurement process.
Agreement	Also referred to as the "Contract". It is the written Contract between NCTA and the respective Contractor covering all parts of this Project.
Agreement Term	The duration of the Agreement, including any authorized renewals and extensions. Also referred to as "Contract Term".
Amendment	Change in the Agreement executed in writing made by adding, altering, or omitting a certain part or terms.
Appendix	A collection of supplementary material for reference purposes only.
Approve	The term "Approve" and its variations (e.g., "Approval" or "Approved"), when capitalized in this Agreement refer to acceptance of a process, vendor, document, condition, action or Deliverable in writing by NCTA. Approval by NCTA shall not be construed to mean endorsement or assumption of liability by the NCTA nor shall it relieve the Contractor of its responsibilities under the Agreement.
BAFO	Best and Final Offer, submitted by a Proposer to alter its initial bid, made in response to a request by the issuing agency.
Buyer	The employee of the State or Other Eligible Entity that places an order with the Contractor.
Business Day	A day, excluding NCTA observed Holidays, Saturdays, and Sundays.
Calendar Day	Every day, including weekends and Holidays, beginning at 12:00:00 a.m. and ending at 11:59:59 p.m.

Term	Definition
Commercial Back Office System (CBOS)	<p>Hardware and software provided by the CBOS contractor to support toll collection and customer service operations, including but not limited to: business interfaces to process payments for prepaid accounts, invoice customers, process payments for post-paid customers, and maintain customer accounts.</p> <p>The CBOS also interfaces with Interoperable Agencies in participating programs, mail house, transponder order fulfillment, retail management, and to specialized third-party aggregators such as mobile applications, fleet, or commercial drivers.</p>
Contract	See "Agreement".
Contract Documents	<p>All of the documents that make up the Contract, including but not limited to:</p> <ul style="list-style-type: none"> • Executed Agreement, including RFP, all executed RFP Addenda, BAFO, and Amendments • Part I, Administrative • Part II, Defined Terms and Acronyms • Part III, Scope of Work and Requirements, as conformed • Part IV, Proposal Content • Part V, Terms and Conditions • Contractor's Proposal • Other Proposer Materials
Contract Term	See "Agreement Term".
Contractor	The person, firm, corporation or entity undertaking the execution of the Work with whom NCTA has entered into an Agreement.
Deliverable(s)	All Documentation and any items of any nature submitted by the Contractor to the NCTA's Project Manager for review and Approval pursuant to the terms of this Agreement. See "Submittal".
Evaluation Committee	The Committee NCTA will use to evaluate Proposer Materials as described in this RFP, to determine the Best Value Proposer.
Exhibit	A supplement to this Contract that establishes requirements for Deliverables.
Extra Work Orders	Changes resulting in additions or deletions to the type or value of Services provided pursuant to this Agreement as directed by NCTA.
Holidays	Days that are designated by NCTA as Holidays for purposes of this Agreement.

Term	Definition
NCTA Designated Representatives	Person or persons authorized by NCTA to represent NCTA in all dealings with the Contractor.
North Carolina Department of Transportation (NCDOT)	A governmental agency in North Carolina responsible for building, repairing, and operating highways, bridges, and other modes of transportation, including ferries in the U.S. state of North Carolina.
North Carolina Turnpike Authority (NCTA)	A Business Unit of NCDOT, responsible for supplementing the traditional non-toll transportation system serving the citizens of North Carolina by accelerating the delivery of roadway projects using alternative financing options and facilitating the development, delivery and operation of an integrated, creative system of toll roads.
Notice	A formal communication addressing legal and Contractual matters.
Notice to Proceed (NTP)	The written authorization by NCTA designating the date and time for the Contractor to commence Work.
Order of Precedence	The order in which Agreement documents control in the event of a conflict or ambiguity in such documents.
Performance Requirements	The required level of performance standards for this Contract as set forth in Part V, Terms and Conditions and Part III, Scope of Work and Requirements .
Plan(s)	Contractor Deliverable that identifies approach to a particular aspect of the Work submitted for Approval in accordance with Part III, Scope of Work and Requirements .
Project	The total Work set forth in Part III, Scope of Work and Requirements and as further set forth and detailed in the Agreement Documents.
Proposal	See "Proposer Materials".
Proposer	An entity that has submitted Proposer Materials in response to this RFP.
Proposer Materials	Documentation submitted by the Proposer in response to this RFP.
Request for Proposal	Also referred to as the "RFP", this document describes the procurement process and provides the scope of services. The RFP forms the basis for the Agreement.
Requirements	Each of the required Work activities in numbered form as set for in Part III, Scope of Work and Requirements that the Contractor shall perform.

Term	Definition
Services	The duties and obligations undertaken by the Contractor to fulfill, the Part III, Scope of Work and Requirements , terms and conditions of the Agreement.
Subconsultant	See "Subcontractor".
Subcontractor	Any person, firm or corporation, other than the Contractor's employees, who contracts to furnish labor, or labor and materials, at the Site(s) or in connection with the Services, whether directly or indirectly, on the Contractor's behalf and whether or not in privity with the Contractor. Also referred to as "Subconsultant".
Submittal	See "Deliverable".
Proposal	A Proposer's written response to the RFP, which provides a straightforward, concise description of the Proposer's ability to meet the Requirements of the RFP and pricing in accordance with the instructions provided herein.
Work	See "Services".

2. Acronyms

Acronym	Meaning
BAFO	Best and Final Offer
CBOS	Commercial Back Office System
CO	Change Order
CSC	Customer Service Center
CSR	Customer Service Representative
DBE	Disadvantaged Business Enterprises
FHWA	Federal Highway Administration
IAG	Inter-Agency Group (E-ZPass governing group)
NC	North Carolina
NCDIT	North Carolina Department of Information Technology
NCDOT	North Carolina Department of Transportation
NCTA	North Carolina Turnpike Authority

Acronym	Meaning
NTP	Notice to Proceed
NCQP	NC Quick Pass
PDF	Portable Document Format
PM	Project Manager
PR	Public Relations
RFP	Request for Proposal
SOW	Scope of Work
US	United States
USB	Universal Serial Bus

Part III.

Scope of Work and Requirements

1. Summary of Scope of Work

The mission of the NCTA marketing program is to effectively deliver various transportation-related messages to targeted audiences by obtaining the highest quality of marketing and advertising services at competitive prices. Specific areas of services required, include but are not limited to: public communications planning and implementation, marketing and advertising services, marketing and media research, media planning and placement, preparation of related media communications and collateral materials, preparation of audio/video presentations and project planning coordination and implementation, public relations support, graphic design services and other related Work. Work efforts may include the development of marketing plans for NCTA branding, and NC Quick Pass branding.

The successful Proposer shall research, develop, and implement various marketing campaigns to increase public awareness and knowledge of various NCTA's programs and initiatives related to toll collection and customer outreach.

2. Scope of Work Requirements

2.1. General Project Requirements

The Contractor shall:

1. Promote transportation safety messages to increase awareness and change behaviors
2. Increase NC Quick Pass transponder sales and ridership on existing and future toll facilities
3. Ensure the most effective use of limited resources, particularly in regard to paid media
4. Educate the public on any important toll collection and transportation related programs/issues
5. Track and report on success/impact of campaigns using industry standard evaluation metrics
6. Educate drivers on NC Quick Pass (Payment Options, Account Benefits, Processes)
7. Educate customers on the Toll Invoice program
8. Increase NC Quick Pass on-time payments
9. Increase Toll Invoice payment collections

10. Educate drivers on ways to pay tolls
11. Develop messaging, media relations, and community outreach for multi-lingual audiences
12. Increase public awareness of NCTA's roadways and time saving benefits
13. Communicate the benefits of using NCTA's roadway system and NC Quick Pass
14. Increase communication and outreach to diverse communities
15. Develop internal communications to NCTA staff and consultants as needed

2.2. Marketing & Advertising (Including Marketing Research) Requirements

NOTE: Deliverable due dates will vary depending on the various marketing campaigns.

The Contractor shall:

16. Provide market research, marketing and public relations concepts, collateral testing, current and future user demographic information, and user language preference data to help prepare a plan.
17. At the direction of NCTA and in conjunction with strategic and marketing plans, analyze and recommend specific marketing mediums (both paid and unpaid across print, digital, broadcast, out of home, sponsorships); placed upon the Approval of NCTA.
18. Monitor placement to ensure accuracy and completion of all paid and unpaid media schedules.
19. Develop and implement fully integrated marketing plans, with tactics including but not limited to printed materials, videos, TV and/or radio PSAs, social media content, customer correspondence concepts, website content, copy and graphics, public education materials, annual reports, point of sale materials and presentations.
20. Provide input and recommendations for planning, coordinating and executing specific portions of NCTA's various annual marketing and advertising plans.
21. Work and interact with NCTA staff and its vendors to provide full integration of advertising plans.

2.3. Public Relations Requirements

The Contractor shall:

22. Develop, execute and track public relations programs in coordination with NCTA staff, if requested.
23. Set and create a media PR relations strategy based on target audience/media, target markets, media missions, media materials and monitoring at the request of NCTA.

2.4. Advertising Requirements

The Contractor shall:

24. Promote a variety of communication and marketing products for various mediums, including print, video, direct mail, internet, transit, outdoor, display, television and radio. Work also includes media buying.
25. Monitor on behalf of NCTA and give weekly updates on the performance of all media suppliers' activities to ensure that: a) all services purchased are delivered; and b) actual performance meets or exceeds the industry standard for that medium. Monthly reports will depend on the stages of progress in a campaign.

2.5. Community Events Marketing Requirements

The Contractor shall:

26. Research program options, provide recommendations and negotiate contracts with various marketing and events entities.
27. Ensure the most effective use of limited resources, particularly with regard to events and marketing programs and activities.
28. Engage target audience with interactive activities on-site at events.
29. Staff and manage on-site events.
30. Take photos and drone footage of the NC Quick Pass booth and customer interactions at events.
31. Manage trackers, inventory, and calendars as needed.
32. Develop, print, and sources materials for outreach as needed.
33. Package and get outreach boxes ready for mailing

- 34. Track and report on success/impact of campaigns using industry standard evaluation metrics.

2.6. Branding Concept Design & Production Requirements

The Contractor shall:

- 35. On a case-by-case basis, the Contractor may be asked to develop and produce creative concepts and communication products for a variety of mediums, which may include print, video, digital, direct mail, transit, outdoor, display, television and radio.
- 36. Participate in strategic planning and concept development for marketing campaigns and creative development.

2.7. Website Development & Management Requirements

The Contractor shall:

- 37. Project manage maintenance and updates to NC Quick Pass website
- 38. Maintain content management for website that NCTA can access and update
- 39. Increase customer adoption of the NC Quick Pass website
- 40. Improve customer experience of the NC Quick Pass website, including mock-ups when needed
- 41. Respond immediately to emergency web updates or deployments and post alerts on NC Quick Pass website
- 42. Increase Search Engine Optimization performance
- 43. Coordinate with tolls system and back-office vendors to ensure web functionally

2.8. App Development & Management

- 44. Project manage maintenance and updates to NC Quick Pass app
- 45. Maintain the NC Quick Pass App Store and Google Play Store pages

- 46. Increase customer adoption of the NC Quick Pass app
- 47. Improve customer experience of the NC Quick Pass app
- 48. Suggest approaches to increase app rating on Apple App Store and Google Play
- 49. Coordinate with tolls system and back-office vendors to ensure app functionally

2.9. Key Personnel

The Contractor is required to always provide sufficient staff to meet the Project Requirements and Contract. The following key personnel shall be provided for the duration of the Project.

- 50.
 - Contractor Project Manager
 - Website and App Project Manager
 - Public Relations Manager
 - Marketing Manager

The Contractor shall staff the following positions as key personnel, ensuring individuals meet the required qualifications below.

- 51.
 - Contractor Project Manager:
 - Five (5) years of experience in managing a project in a leadership position.
 - Three (3) years of experience in marketing and communications.
 - Website and App Project Manager
 - Three (3) years of experience in website and app management.
 - Experience using Jira and WordPress.
 - Public Relations Manager
 - Three (3) years of experience in public relations and transportation.
 - Marketing Manager
 - Three (3) years of experience in marketing and transportation.

Special requirements for the following key personnel roles:

- 52.
 - All key personnel shall be 100% allocated to this Project (unless NCTA decides otherwise), work in the Raleigh-Durham area, and be available to work at the NCTA headquarters throughout the term of the Contract.
- 53. The Contractor Project Manager shall serve as the single point of contract for all contract related issues and issues concerning performance, progress review, scheduling and service.

54. The Contractor Project Manager shall be responsible for managing all Project risks and ensuring satisfactory compliance with all scope of work Requirements.
55. The Website and App Project Manager shall be responsible for coordination and communication to the NCTA team and technical vendors responsible for the NC Quick Pass app and website.
56. The Public Relations Manager shall be responsible for all NCTA roadway project communications in coordination with the NCTA Deputy Director of Public Relations and Director of Marketing and Communications.
57. The Marketing Manager shall be responsible for all NC Quick Pass marketing and communications projects in coordination with the NCTA Deputy Director of Marketing and Creative and Director of Marketing and Communications.
58. The Contractor shall obtain written NCTA Approval for any proposed key personnel prior to service.
59. NCTA shall have the right to reject, in its sole discretion, any key personnel proposed by the Contractor.
60. The Contractor shall obtain written NCTA Approval for any salary changes proposed for key personnel.
61. NCTA shall have the right to review the salary information of staff supporting NCTA as part of this Contract.
62. The Contractor shall immediately remove any individual employed or contracted by the Contractor from Services under the Contract that in NCTA's sole determination, is not performing the Work in a proper and skillful manner or is otherwise unsuitable for their position.
63. At any time should it be necessary to replace Contractor key personnel, the Contractor shall propose substitutions and shall submit the names and qualifications of the proposed replacement(s), in writing.
64. The replaced key personnel shall be backfilled within 60 Calendar Days. NCTA reserves the right to reduce the Contractor's monthly invoiced amount until such vacant position is filled.

2.10. Project and Coordination Meetings

65. The Contractor shall attend meetings with NCTA as required by NCTA.
66. The Contractor, at the request of NCTA, shall be required to meet weekly with NCTA for project review meetings. The purpose of these meetings will be to review project progress reports, discuss Contractor and NCTA performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas and discuss any other pertinent topics.

Part IV. Proposal Content

1. Proposal Response and Submission Instructions

1.1. Content of Proposal

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the Proposer’s ability to meet the Requirements of the RFP. Portions of the Proposal that are excluded from these page limitations are shown below in *Table IV-1*.

Table IV-1: Proposal Page Limitations

Proposal Sections to be Completed by a Proposer	Page Count Limitations
Proposal Cover Sheet	No limitations
Title Page	Up to 1 page
Cover Letter	Up to 2 pages
Section 1: Proposer Qualifications	Limited to a combined total of 5 pages (excluding all table of contents, list of tables or figures) and a font of 12 point.
Section 2: Key Personnel Qualifications	
Section 3: Approach to Scope of Work & Requirements	Up to 15 pages (excluding all table of contents, list of tables or figures) and a font of 12 point.
Section 4: Adherence to Part V, Terms and Conditions	No limitations
Section 5: Forms and Submittals	No limitations

The Proposal shall be submitted in the format shown below. Each lettered item designates a specific and separate section to be included in the Proposal:

- A. Proposal Cover Sheet** – The cover sheet, provided as **Exhibit A-1**, shall be included at the front of the Proposal.
- B. Title Page** – The Proposal shall include a title page with the following information:
 - i. Company name, address, and phone number
 - ii. Authorized representative
 - iii. Single point of contact for this procurement (person’s name and email address)
- C. Cover Letter** – The Proposal shall include a cover letter with the following information:
 - 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. Corporate commitment that the Proposal meets the scope, schedule, and requirements of the RFP.

- iii. Signed by an officer of the firm with signature authority to enter into the proposed Contract with NCTA.

D. Proposal Section 1: Proposer Qualifications

Provide the following information regarding the Proposer's qualifications:

- i. A brief history and description of the Proposer's organizational structure, including size, number of employees, capability and area(s) of specialization.
- ii. A detailed statement noting the following: Proposer has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Proposer 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.
- iii. Confirm financial capacity to perform and to continue to perform its obligations under the Contract. Submit a Certification of Financial Condition using **Exhibit A-3**. Include in Proposal Section 5 and note in your response to this item that it is provided in Proposal Section 5.
- iv. A detailed discussion of the Proposer's qualifications and experience related to **Part III, Scope of Work and Requirements** required by this RFP, including Subcontractors' relevant experience. Proposer's experience, such as providing communications, marketing, and advertising services in connection with transportation and/or tolling organizations and North Carolina market experience in Charlotte and Raleigh areas.
- v. Customer Reference Form using **Exhibit A-4**. Include in Proposal Section 5 and note in your response to this item that it is provided in Proposal Section 5. The completed form must include at least three (3) references for which your company has provided services of similar size and scope to that proposed herein. NCTA may contact these users to determine the Services provided are substantially similar in scope to those proposed herein and Proposer's performance has been satisfactory. The information obtained may be considered in the evaluation of the Proposal.

E. Proposal Section 2: Key Personnel Qualifications

Provide the following information regarding the Proposer's key personnel qualifications, including Subcontractors. Please number and provide the information in the specific format provided below.

- i. Identify the following key personnel proposed for this Project. Please refer to the minimum experience requirements for each position in **Part III, Section 2.9 Key Personnel**.
 - a. Contractor Project Manager
 - b. Website and App Project Manager
 - c. Public Relations Manager
 - d. Marketing Manager
- ii. Describe the experience of each key personnel and how it related specifically to this Project. The resources will be available throughout the Term of the Agreement. Any changes in key personnel shall be presented in writing to NCTA for review and approval prior to making such changes.

- iii. Provide resumes (not to exceed 2 pages per team member) for each of the key personnel. Include in Proposal Section 5 and note in your response to this item that it has been provided in Proposal Section 5.
- iv. Complete the List of Subcontractors Form using **Exhibit A-2** which includes Subcontractor name, address, Work to be performed, and expected percentage of total Work value to be performed. Also complete the RS-2 Form for each Subcontractor as further instructed in **Part I, Section 2.20.4**. Include both the completed list of Subcontractors and the RS-2 Form in Proposal Section 5 and note in your response to this item that they have been provided in Proposal Section 5.

F. Proposal Section 3: Approach to Scope of Work & Requirements

- i. For each of the below items, the Proposer shall provide the following information: 1) a detailed approach to accomplishing 2) the schedule for accomplishing 3) the tools for measurement. (Reference the Requirements in **Part III, Section 2.2 – Section 2.8**).
 - a. Marketing and Advertising (including Marketing Research)
 - b. Public Relations
 - c. Advertising
 - d. Community Events Marketing
 - e. Branding Concept Design & Production
 - f. Website Development & Management
 - g. App Development & Management

G. Proposal Section 4: Adherence to Part V, Terms and Conditions

- i. The Proposer must submit its Proposal on the basis of the terms and conditions set out in **Part V, Terms and Conditions**. NCTA may reject any Proposal that is conditioned on the negation of Terms and Conditions set out in **Part V, Terms and Conditions** or to other provisions of the RFP as specifically identified above.
- ii. The Proposer must clearly identify any proposed exceptions to the Terms and Conditions in this Proposal Section 4, which will be considered in accordance with **Part I, Section 2.17 Contractual Obligations**. The Contractor waives the right to raise new exceptions and alternatives during and after negotiations, however, any details not yet defined in the documents by NCTA may still be negotiated.

H. Proposal Section 5: Forms & Submittals

Proposers shall provide all Proposal forms required to be submitted as part of the RFP in Section 5 of the Proposal, unless otherwise specifically directed. Proposers shall submit properly completed forms that have been provided in the **Exhibits** file. Please refer to **Table IV-2** below for a Proposal Forms and Submittal checklist. The checklist identifies the location of the form or the Submittal requirement in the RFP and also where the form or Submittal is to be included in the Proposal.

Proposers shall not modify any of the forms unless specifically instructed by NCTA to do so. Completion of forms will be checked during the initial Pass/Fail screening of the submitted Proposals. Proposals not adhering to this requirement may be considered as non-compliant.

Samples of Work: The Proposer shall provide the below work samples and include in Proposal Section 5. These work samples shall be ones that the Proposer has executed for a client or clients in the past 5 years. For each work sample, include a 1-page description of the campaign worked on, why this medium was chosen, and its documented results. Additionally, in **Exhibit B**, provide the estimated cost to recreate the materials.

- Three (3) digital ads;
- One animated/ video ad;
- One customer facing website;
- One customer facing app;
- Two (2) radio ads;
- Three (3) social media and email marketing components;
- One (1) outdoor ad (5" x 7" or 8" x 10" photos are acceptable);
- One outreach event/staffing concept; and
- Two additional items (any medium) that illustrate the Proposer’s unique creative strengths in marketing and customer experience.

Exhibit B: Pricing Sheets & Instructions: Complete **Exhibit B** in accordance with the instructions outlined within it and include in Proposal Section 5. The Proposal price shall constitute the total cost to Buyer for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other similar fees.

Table IV-2: Proposal Forms and Submittal Checklist

Form #	Form/Submittal Name	Location in RFP	Location of Form/Submittal in Proposal
Proposal Forms to be Submitted			
A-1	Proposal Cover Sheet	Exhibit A-1	Front of Proposal
A-2	List of Subcontractors and RS-2 Form	Exhibit A-2	Proposal Section 5
A-3	Certification of Financial Condition	Exhibit A-3	Proposal Section 5
A-4	Customer Reference Form	Exhibit A-4	Proposal Section 5
A-5	HUB Supplemental Supplier Information <i>*Only if applicable to the Proposer</i>	Exhibit A-5	Proposal Section 5
B	Pricing Sheets & Instructions	Exhibit B	Proposal Section 5

Form #	Form/Submittal Name	Location in RFP	Location of Form/Submittal in Proposal
Other Proposal Submittals			
N/A	Resumes	See Part IV – Section 1.1.E	Proposal Section 5
N/A	Samples of Work	See Part IV – Section 1.1.H	Proposal Section 5

1.2. Format of Technical Proposal

1. **Form of Proposal** – Submit Proposal only electronically on a USB flash drive.
 - a. The electronic copy shall be provided in a **searchable (NOT SCANNED)** *.pdf format. All Proposal Sections listed in **Table IV-1** shall be a separate *.pdf file. Any Proposal Exhibits or information prepared either as graphics or with other programs such as scheduling programs shall be viewable in a *.pdf file without any other software required for Proposal review.
 - i. **Exception:** The file format for **Exhibit B** shall be submitted in **both** Microsoft Excel and *.pdf format.
 - b. On a separate USB flash drive, Proposers shall also submit a redacted electronic copy of the Proposal (Proprietary and Confidential Information Excluded). Any proprietary information identified as confidential and proprietary in accordance with G.S. § 132-1.2 and the Terms and Conditions of this RFP, should be excluded.
 - c. File contents **shall NOT** be password protected but shall be in .PDF or .XLS format and shall be capable of being copied to other sources.
2. **Number of Copies** - One (1) USB flash drive containing all portions of the Proposer’s Proposal response shall be provided and one (1) USB flash drive containing a redacted copy of the Proposer’s Proposal response shall be provided. Two (2) USB flash drives in total shall be submitted.
3. **Page Presentation** – Proposer Proposal text shall be single-spaced, a minimum of 12-point Times New Roman font. Each page header and/or footer should include the Proposer’s name and Proposal section, along with page numbers and date of the Proposal. NCTA will not be responsible for reviewing portions of proposals with illegible text. Headers and footers may be in different size font from that specified but no less than 9-point font.
4. **Trade Secrets and Confidential Information** - NCTA is a public agency of the State of North Carolina, subject to the North Carolina Public Records Act, Chapter 132 of the North Carolina General Statutes. NCTA may maintain confidential information, including any designated as trade secrets or otherwise proprietary, only in accordance applicable Federal and State laws or regulations. NCTA, therefore, expects that Proposers will keep confidential information designations to a minimum.

- a. A Proposer, having formed a good faith opinion, upon consultation with legal or other knowledgeable advisors that information submitted may contain a trade secret as defined in G.S. § 66-152 or other information exempted from the North Carolina Public Records Act pursuant to G.S. § 132-1.2, may so designate appropriate portions of its Proposal by marking the top and bottom of pages containing confidential information in boldface type "CONFIDENTIAL." NCTA, however, may serve only as a custodian of information a Proposer deems confidential. NCTA shall not act as an arbiter or defender of any claims related to assertions of confidential information. If a request is made for disclosure of information submitted, or an action is brought to compel NCTA to disclose information marked confidential pursuant to G.S. § 132-1 et seq. NCTA will notify the affected Proposer of such request or action.
- b. In submitting a Proposal in response to this RFP, a Proposer agrees to: (i) defend its assertions of confidentiality by instituting appropriate legal proceedings, at its own expense and through its counsel, or intervening in an action brought against NCTA to compel disclosure, to defend its assertions of confidentiality; and (ii) hold the State and NCTA, and any officials or employees thereof harmless from any and all damages, costs, and attorney's fees awarded against the State and NCTA arising out of any such actions. Nothing in this section shall preclude the State or NCTA from participating in the defense of such actions, at its option and expense through its counsel. NCTA shall have no liability to a Proposer with respect to the disclosure of any information, including confidential information, subject to an order by a court of competent jurisdiction pursuant to G.S. § 132-9 or any other applicable law.
- c. In accordance with G.S. § 136-28.5, bids and documents submitted in response to an advertisement, or this RFP shall not be public record until the NCTA issues a decision to award or not to award the Contract.

1.3. Submission of Proposal

All Proposal USB flash drives shall be submitted in a sealed envelope, bearing on the outside the following information:

Proposal:

MARKETING AND COMMUNICATIONS RFP

Submitted By:

PROPOSER'S NAME

PROPOSER'S ADDRESS

CITY, STATE, ZIP CODE

PROPOSER'S PHONE NUMBER

The USB flash drives for the Proposal shall be delivered to the address provided below. If hand delivery, please reach out to the NCTA Contact Person to coordinate the receipt.

Physical Delivery Address:

North Carolina Turnpike Authority

2501 Aerial Center Parkway, Suite 200

Morrisville, NC 27560

Attn: Eliza Davis

IMPORTANT NOTE: Proposer shall bear the risk for late submission due to unintended or unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service. It is the Proposer’s sole responsibility to ensure its proposal has been received as described in this RFP by the specified time and date provided in **Table I-1: Procurement Schedule**. Any proposal received after the proposal deadline will be rejected.

Part V. Terms & Conditions

1. Contract Terms and Conditions

1.1. Term of Contract

The term of the Contract shall have an initial term of three (3) years, beginning on the date of contract award (the "Effective Date"), unless terminated, canceled or extended as otherwise provided herein.

- At the end of the base Contract term, NCTA shall have the option, in its sole discretion, to extend the Contract on the same terms and conditions for up to a total of two (2) additional two (2) year terms.
- NCTA will give the Contractor written notice of its intent to exercise an extension option no later than sixty (60) Calendar Days before the end of the Contract's then-current term.

1.2. Payment Terms and Conditions

1. Payment terms are net thirty (30) Calendar Days after receipt of a correct invoice. NCTA is responsible for all payments under the Contract. A "correct" invoice is one that contains an accurate description of the amounts due, is in the Approved format, has no errors, includes all required supporting information including payment Approvals, and meets all other Requirements for invoicing set forth in **Part III, Scope of Work and Requirements**.
2. The Contractor shall invoice NCTA in accordance with the amounts set forth in the Price Proposal.
3. NCTA may exercise any and all rights of set off as permitted in the Set Off Debt Collection Act (Chapter 105A-1 et. seq. of the N.C. General Statutes) and applicable Administrative Rules. Upon Contractor's written request of not less than thirty (30) Calendar Days and Approval by NCTA, NCTA may:
 - a. Forward the Contractor's payment check(s) or other mutually acceptable means directly to any person or entity designated by the Contractor, or
 - b. Include any person or entity designated in writing by Contractor as a joint payee on the Contractor's payment check(s), however
 - c. In no event shall such Approval and action obligate NCTA to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all Contract obligations.

1.3. Audits and Financial Reporting

1.3.1. Annual Audited Financial Statements

The Contractor shall submit on an annual basis its current audited financial report, financial statements, and any associated notes for the term of the Contract.

1.3.2. Audit and Examination of Records

1. Definition of Records
 - a. Contract Records shall include, but not be limited to, all information, communications and data, whether in writing or stored on a computer, external hard drive, computer disks, microfilm, writings, working papers, drafts, computer printouts, charts or any other data

compilations, books of account, photographs, videotapes and audiotapes supporting documents, any other papers or preserved data in whatever form, related to the Contract or the Contractor's performance of the Contract determined necessary or desirable by the NCTA for any purpose.

- b. Proposal Records shall include, but not be limited to, the Proposal Materials, any material relating to the determination or application of equipment rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions, quotations from Subcontractors, or material suppliers, profit contingencies and any manuals standard in the industry that may be used by the Contractor in determining a price.
2. Pursuant to G.S. § 147-64.7, NCTA, the State Auditor, appropriate Federal officials, and their respective authorized employees or Agents are authorized to examine all books, records, and accounts of the Contractor insofar as they relate to transactions with any department, board, officer, commission, institution, or other authority of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. Additional audit or reporting Requirements may be required by any authority, if in NCTA's opinion, such requirement is imposed by Federal or State law or regulation. The State Auditor and internal auditors of NCTA may audit the records of the Contractor during and after the term of the Contract to verify accounts and data affecting fees and performance.
3. NCTA reserves and is granted the right (at any time and from time to time, for any reason whatsoever) to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) or Proposal Records (as herein defined) of the Contractor or any Subcontractor. By submitting a response to the Request for Proposal (RFP), Contractor or any Subcontractor submits to and agrees to comply with the provisions of this section.
4. NCTA reserves and is granted the right (at any time and from time to time, for any reason whatsoever) to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) or Proposal Records (as herein defined) of the Contractor or any Subcontractor. By submitting a response to the Request for Proposal (RFP), Contractor or any Subcontractor submits to and agrees to comply with the provisions of this section.
5. Contractor shall preserve all Contract Records for the entire term of the Contract and for a period of three (3) years after the later of: (i) completion of the Contract (ii) until all claims (if any) regarding the Contract are resolved, or (iii) expiration of the Qualification Package Records and Contract Records' status as public records.

1.4. Contractor Cooperations

1. During the course of this Agreement, NCTA may undertake or award other agreements for additional Work, including but not limited to separate agreements with different contractors, vendors and or internal/external agencies related to **Part III, Scope of Work and Requirements**. It is critical that close coordination with interfacing contractors, vendors and/or other agencies as directed by NCTA occurs throughout the term of this Agreement. Contractor shall fully cooperate with NCTA and the parties to all other contracts and carefully integrate and schedule its own Work with said parties.
2. NCTA will expect all contractors to comply with all Requirements, special provisions and other terms and conditions applicable to the Contract(s) at all times during the performance of the Contract(s). In

the event of a dispute between contractors, clarifications may be sought from NCTA; provided Contract Terms, conditions or obligations shall remain in effect, excepting in instances wherein a Change Order or other Contract modification is duly executed in writing in accordance with this **Part V, Terms and Conditions**; however, contractors shall engage in all efforts to resolve disputes prior to participation of NCTA and further, such participation by NCTA does not imply or represent a NCTA responsibility for resolution or payment of claims that arise out of a dispute between two contractors.

3. Should problems in coordination with other contractors occur, the Contractor shall make NCTA aware of these problems immediately and shall take steps to address the problems and mitigate any delays or additional costs. Contractor shall not commit or permit any act that will interfere with the performance of Work by any other contractor or by NCTA.
4. Additional Coordination and Cooperation Requirements
 - a. The Contractor shall work closely with NCTA and any other contractors who will be working for NCTA for the purpose of coordinating any activity which may affect both contractors.
 - b. Should problems in coordination with other contractors occur, the Contractor shall make NCTA aware of these problems immediately, and shall take steps to address the problems and mitigate any delays or additional costs. Contractor shall not commit or permit any act that will interfere with the performance of Work by any other contractor or by NCTA.
 - c. The Contractor shall cooperate with all other contractors to avoid any delay or hindrance to the other contractors or forces. NCTA reserves the right to perform other or additional Work (including material sources) at any time, by the use of other forces.
5. Each contractor shall be responsible to the other for all damage to Work, to persons or property caused to the other by their operations, and for loss caused the other due to unnecessary delays or failure to finish the Work within the time specified for completion.

1.5. Warranties

The Contractor warrants that all Services shall be performed in a high-quality, professional manner by qualified and skilled personnel in compliance with NCTA's Requirements as set forth in **Part III, Scope of Work and Requirements**. In the event NCTA determines that any Services do not conform to the foregoing warranty, NCTA shall be entitled to elect one of the following remedies: (i) revision of the Services by the Contractor until NCTA deems them to be in conformity with the warranty in this section, at no charge to NCTA; (ii) refund from the Contractor for all fees paid in connection with the Services, which NCTA deems were not as warranted, subject to the provisions of **Part V, Terms and Conditions**, such that the Contractor is not required to refund fees for non-provision of Services for which Liquidated Damages have been assessed, (iii) reimbursement by the Contractor for NCTA's costs and expenses incurred in having the Services re-performed by NCTA or someone other than the Contractor. Notwithstanding the foregoing, nothing in this Section shall be construed to limit NCTA's rights pursuant to **Part V, Terms and Conditions**, Section 2.4.2 Termination for Cause.

1.6. Authority of the NCTA Project Manager

1. For purposes of this Contract the Director, Marketing & Communications is deemed the NCTA Project Manager. The Contractor hereby authorizes the NCTA Project Manager to determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any

way related to or on account of, this Agreement including, without limitation: questions as to the value, acceptability and of the Services; questions as to either party's fulfillment of its obligations under this Agreement; negligence, fraud or misrepresentation before or subsequent to execution of this Agreement; questions as to the interpretation of **Part III, Scope of Work and Requirements**; and claims for damages, compensation and losses.

2. The NCTA Project Manager shall act as the designated representative of NCTA in all matters relating to this Agreement.
3. The NCTA Project Manager may give orders to the Contractor to do Work that they determine to be necessary for the Contractor to fulfill the Contractor's obligations under this Agreement.
4. If requested by the Contractor, the NCTA Project Manager will promptly provide appropriate explanations and reasons for his determinations and orders hereunder.
5. The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the NCTA Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the NCTA Project Manager's determination or order. Orders shall be in writing, unless not practicable, in which event any oral order must be confirmed in writing by the Project Manager as soon thereafter as practicable.

1.7. Order of Precedence

The Contract is subject to the terms and conditions of this solicitation, which, in case of conflict, shall have the following Order of Precedence:

1. Executed Agreement, including RFP, all executed RFP addenda, BAFO (if applicable), and Amendments.
2. **Part III, Scope of Work and Requirements**, including Addenda.
3. **Part V, Terms and Conditions**, including Addenda.
4. Contractor's Proposal, including Exhibits and Appendices.

2. Contract Changes and Termination

2.1. General

The following Contract changes are allowable within the scope of this Contract:

1. Change Orders – The NCTA anticipates issuing Change Orders for Work required to modify, enhance or otherwise improve the marketing, communications and advertising Services associated with NCTA's program.
2. Extra Work Orders – The NCTA anticipates issuing Extra Work Orders to address variances in the specifications or **Part III, Scope of Work and Requirements** beyond that of the Approved Operational Concept and for which there is no appropriate pay item or category. Extra Work Orders will be issued within the sole discretion of the NCTA, and such additional Work may be subject to a new competitive procurement as deemed to be in the best interest of the NCTA.

3. Task Orders – The NCTA anticipates issuing Task Orders for Work required to enhance ongoing Services in accordance with labor rates proposed and set forth in the Proposal pricing.

2.2. Change Orders

1. NCTA may elect to have the Contractor perform the Change Order Work. In this case, the Contractor shall provide a detailed Operational Proposal and Price Proposal for the order, and await Approval and Notice to Proceed from NCTA before incurring any expenses for which the Contractor expects reimbursement.
2. If NCTA advertises the Change Order Work, NCTA may elect to use the Contractor to assist NCTA in the procurement of additional Hardware, Software or Services, and/or integrate the Change Order Work into the Back Office System or operations workflow. In this case, NCTA would obtain these Services through a negotiated and Approved Task Order.

2.3. Extra Work Orders

An Extra Work Order will ONLY be a change in the Scope of Work and Requirements requiring different operational services than that covered by the existing Contract or a change to a Contract Term and condition with an impact. Some examples include:

1. Large-scale changes the Contractor's scope of Work;
2. Changes to insurance or legal Requirements.

2.4. Contract Termination

2.4.1. Termination General Requirements

1. The NCTA may terminate the Contract(s), in whole or in part, for default subject to the default provisions set forth below.
2. Any required Notices of termination made under this Contract shall be transmitted via U.S. Mail, Certified Return Receipt Requested, or personal delivery to the Contractor's contract administrator. The period of Notice for termination shall begin on the day the return receipt is signed and dated or upon personal delivery to the Contractor(s) contract administrator.
3. The parties may mutually terminate this Contract by written agreement at any time.
4. NCTA may terminate this Contract, in whole or in part, pursuant to the Terms and Conditions in the Solicitation Documents.
5. NCTA will notify the Contractor(s) at least ninety (90) Calendar Days prior to the termination of the Contract in the absence of cause. This notification will require the Contractor(s) to initiate actions in preparation for leaving the NCTA Project site and handing off system operations to replacement entities. These actions shall include:
 - a. Acknowledgement of receipt of End of Contract notification, and
 - b. Act in accordance with **Part V, Terms and Conditions**, Section 2.4.4 End of Contract Transition.

2.4.2. Termination for Cause

In the event any Services furnished by the Contractor during performance of any Contract Term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written Notice thereof to Contractor, the NCTA may cancel and procure the Work or Services from other sources; holding Contractor liable for any excess costs occasioned thereby. The rights and remedies of NCTA provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. The Contractor shall not be relieved of liability to NCTA for damages sustained by NCTA arising from Contractor's breach of this Contract; and the NCTA may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Contractor shall be cause for termination.

2.4.3. Termination for Convenience Without Cause

The NCTA may terminate the Contract(s) without cause, in whole or in part by giving ninety (90) Calendar Days prior Notice in writing to the Contractor. The Contractor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the NCTA, the NCTA will pay for all Work performed and products delivered in conformance with the Contract up to the date of termination. This is an incidental item within **Part III, Scope of Work and Requirements**, but without separate compensation.

2.4.4. End of Contract Transition

The Contractor acknowledges that the Services it provides under the terms of the Contract are vital to the successful operation of the NCTA program, and that said Services shall be continued without interruption. In the event that this Agreement is terminated for convenience or default or upon the Agreement completion date or expiration of the Agreement Term or any extensions thereof, the Contractor shall cooperate with NCTA to facilitate a smooth succession to the NCTA's selected successor for the Services, whether the successor is NCTA or a third-party. The Requirements for this End of Contract Transition are contained in **Part III, Scope of Work and Requirements**. Costs for such End of Contract Transition are included in the current Contract, and the Contractor shall perform such Work without additional compensation.

The Contractor acknowledges that the Services provided under the terms of this Contract are vital to the successful operation of NCTA's program, and that said Services shall be continued without interruption. If NCTA determines that additional Services by Contractor are necessary after the expiration of the Contract to facilitate a smooth succession, the Contractor must also provide for up to six (6) months after the expiration or cancellation of the Agreement additional transition assistance requested by NCTA, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of the Agreement, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. If additional Services are required and requested by NCTA, the State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Agreement for Contract performance. If the State cancels the Agreement for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the

Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.

3. General Terms & Conditions

3.1. Personnel

1. Contractor shall not substitute key personnel assigned to this Contract without prior written Approval by NCTA. Any desired substitution shall be noticed to NCTA, accompanied by the names and references of Contractor's recommended substitute personnel. NCTA will approve or disapprove the requested substitution in a timely manner. NCTA may, in its sole discretion, terminate the services of any person providing Services under this Contract. Upon such termination, NCTA may request acceptable substitute personnel or terminate the Contract Services provided by such personnel. The Contractor agrees to provide NCTA with resumes of the replacement, acceptable, substitute personnel within thirty (30) Calendar Days of receiving a request from NCTA to terminate the services of any person providing Services under this Contract and agree to make that person or persons available for interviews by NCTA.
2. Unless otherwise provided by NCTA, the Contractor shall furnish all necessary personnel, Services, and otherwise perform all acts, duties and responsibilities necessary or incidental to the accomplishment of the tasks specified in the Agreement. Contractor shall be legally and financially responsible for its personnel including, but not limited to, any deductions for social security and other withholding taxes required by state or federal law. Contractor shall be solely responsible for acquiring any equipment, furniture, and office space not furnished by the NCTA necessary for Contractor to comply with the Contract. Contractor personnel shall comply with any applicable State facilities or other security rules and regulations.

3.2. Subcontracting

The Contractor may subcontract the performance of required Services with other contractors or third-parties, or change Subcontractors, only with the prior written consent of NCTA. Contractor shall provide NCTA with complete copies of any agreements made by and between Contractor and all Subcontractors. The Contractor remains solely responsible for the performance of its Subcontractors. Subcontractors, if any, shall adhere to the same standards required of the Contractor. Any contracts made by the Contractor with a Subcontractor shall include an affirmative statement that NCTA is an intended third-party beneficiary of the contract; that the Subcontractor has no agreement with NCTA; and that NCTA shall be indemnified by the Contractor for any claim presented by the Subcontractor. Notwithstanding any other term herein, Contractor shall timely exercise its contractual remedies against any non-performing Subcontractor and, when appropriate, substitute another Subcontractor.

3.3. Contractor's Representation

Contractor warrants that qualified personnel shall provide Services 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 information technology industry. Contractor agrees that it will not enter into any agreement with a third-party that might abridge any rights of NCTA under this Contract. Contractor will serve as the prime Contractor under this Contract. Should NCTA approve any

Subcontractor(s), the Contractor shall be legally responsible for the performance and payment of the Subcontractor(s). Names of any third-party contractors or subcontractors of Contractor may appear for purposes of convenience in Contract Documents; and shall not limit Contractor's obligations hereunder. Third-party subcontractors, if approved, may serve as Subcontractors to Contractor. Contractor will retain executive representation for functional and technical expertise as needed in order to incorporate any Work by third-party subcontractor(s).

3.4. STATE PROPERTY AND INTANGIBLE RIGHTS

The parties acknowledge and agree that NCTA shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data and other Work products first originated and prepared by the Contractor for delivery to the State (the "Deliverables"). To the extent that any Contractor Technology is contained in any of the Deliverables, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Contractor Technology in connection with the Deliverables for NCTA's internal business purposes. Contractor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative Works thereof, or other Work products provided by NCTA to the Contractor. NCTA hereby grants Contractor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the Contractor for delivery to NCTA.

3.4.1. Data Security

1. All data, records, and operations history information shall remain property of the NCTA at all times during the life of the Contract and after Contract termination.
2. The Contractor(s) shall ensure that no unauthorized personnel will have access to individual facilities, cabinets, data and records, payment histories, any personal information of existing or potential NCTA toll customers. Paper records shall be locked when not in use; Systems shall have secure password and ID controls for any data access. Contractor shall comply with the North Carolina Statewide Information Security Manual. Currently found at <http://it.nc.gov/document/statewide-information-security-manual>, as may be amended from time to time throughout the term of the Contract. Further, data, records, operations history, or customer account information shall be stored or housed in the continental United States.
3. Contractor shall notify NCTA of any security breaches immediately following discovery of the breach in accordance with the NC Identity Theft Act, G.S. § 75-60 *et seq.*
4. In accordance with G.S. § 136-89.213, customer account information is confidential and not subject to public disclosure.
5. Contractor shall ensure that all subcontractors and third parties performing tasks with respect to the Contract comply with the data security provisions contained in this section.

3.5. Other General Provisions

3.5.1. Prohibition Against Contingent Fees and Gratuities

1. Contractor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Contractor further warrants that no commission or other payment was or will be received from or paid to any third-party contingent on the award of any contract by the State, except as shall be expressly communicated to NCTA in writing prior to Acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Contractor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the bidder(s) or Contractor(s) as permitted by State or Federal law.
2. Gift Ban - By Executive Order 24, issued by Governor Perdue, and G.S. § 133-32, it is unlawful for any vendor or contractor (i.e., architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s cabinet agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who: (a) have a contract with a governmental agency; or (b) have performed under such a contract within the past year; or (c) anticipate bidding on such a contract in the future. For additional information regarding the specific Requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. § 133-32.

3.5.2. Equal Employment Opportunity

Contractor shall comply with all Federal and State Requirements concerning fair employment and employment of the disabled and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

3.5.3. Advertising / Press Release

The Contractor absolutely shall not publicly disseminate any information concerning the Contract without prior written Approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the NCTA Contract Administrator unless otherwise named in the solicitation documents.

3.5.4. Confidentiality

To promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in G.S. § 132-1 et. seq. Such information may include trade secrets defined by G.S. § 66-152 and other information exempted from the Public Records Act

pursuant to G.S. § 132-1.2. Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Contractor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the Requirements of the Rules and Statutes set forth above.

3.5.5. Assignment

Contractor may not assign this Contract or its obligations hereunder except as permitted by this paragraph. Contractor shall provide reasonable Notice of not less than thirty (30) Calendar Days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract atoning to the terms and conditions agreed, and that Contractor shall affirm that the assignee is fully capable of performing all obligations of Contractor under this Contract. An assignment may be made, if at all, in writing by the Contractor, Assignee and the State setting forth the foregoing obligation of Contractor and Assignee.

3.5.6. Insurance Coverage

During the term of the Contract, the Contractor 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 Contractor shall provide and maintain the coverage and limits outlined below:

The Contractor, at all times during the Term of this Agreement, shall maintain insurance in such form as is satisfactory to NCTA, and will furnish NCTA with continuing evidence of insurance as provided below. With respect to any insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of North Carolina and all such insurance shall meet all laws of the State of North Carolina. The Contractor 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 this Contract.

NCTA shall be named as an "additional insured" on all applicable coverage. The Contractor shall provide NCTA with certificates issued by the insurer showing the required coverage to be in effect and showing NCTA to be an additional insured. Such policies shall provide that the insurance is not cancelable except upon thirty (30) Calendar Days prior written Notice to NCTA. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty (30) Calendar Days advance Notice shall be given to NCTA or as provided in accordance with North Carolina law. Material change includes but is not limited to change in limits, coverage, or status of the policy. Copies of all insurance policies and endorsements shall be provided to NCTA upon request.

NCTA reserves the right to review all insurance coverage and amounts of insurance coverage on an annual basis and to require the Contractor to adjust the insurance coverage and amounts of insurance coverage based on industry standards for contracts of this size and type. Contractor shall timely pay all premiums and deductibles when due for all insurance coverage required herein.

The Contractor shall not commence any Work until it has obtained the following types of insurance, and a certificate of such insurance has been received and approved by NCTA. Nor shall the Contractor allow any

Subcontractor to commence Work until all insurance required of the Subcontractor has been obtained. The Contractor shall provide the required Certificates of Insurance to NCTA within fourteen (14) Calendar Days of Notice of Award.

During the term of the Contract, the Contractor 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. As a minimum, the Contractor shall provide and maintain the following coverage and limits:

1. **Worker's Compensation** – The Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of the Contractor's employees who are engaged in any Work under the Contract. If any Work is sublet, the Contractor shall require the Subcontractor to provide the same coverage for any of his employees engaged in any Work under the Contract.
2. **Commercial General Liability Policy** – Combined Single Limits: \$1,000,000.00 per aggregate, \$3,000,000.00 per occurrence The Commercial General Liability Policy shall include contractual liability coverage and must be on an "occurrence" basis. A Comprehensive General Liability Policy may be substituted for the Commercial General Liability Policy if the Comprehensive General Liability Policy has been endorsed to insure contractual liability, broad form property damage, and personal injury liability.
3. **Professional Liability Policy** – Any other provision herein to the contrary notwithstanding, the Professional Liability Policy must be with a company authorized to do business in the State of North Carolina, affording professional liability coverage for the professional services to be rendered in accordance with this Contract in the amount of at least one million dollars (\$1,000,000). The Contractor shall maintain professional liability coverage for a minimum of three (3) years after completion of the Services rendered under this Contract.
4. **Crime** – Crime Insurance with limits not less than \$1,000,000.00. Said policy shall cover both theft and burglary.
5. **Cyber Liability Insurance** – The Contractor shall maintain Privacy and Network Security (Cyber Liability) insurance covering liability arising from (1) hostile action, or a threat of hostile action, with the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access/unauthorized use of a computer system including exposing or publicizing confidential electronic data or causing electronic data to be inaccessible (2) computer viruses, Trojan horses, disabling codes, trap doors, back doors, time bombs drop-dead devices, worms and any other type of malicious or damaging code (3) dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons, to affect, alter, copy, corrupt, delete, disrupt, or destroy a computer system or obtain financial benefit for any party or to steal or take electronic data (4) denial of service for which the insured is responsible that results in the degradation of or loss of access to internet or network activities or normal use of a computer system (5) loss of service for which the insured is responsible that results in the inability of a third-party, who is authorized to do so, to gain access to a computer system and conduct normal internet or network activities (6) access to a computer system or computer system resources by an unauthorized person or persons or an authorized person in an unauthorized manner with a limit not less than one million dollars (\$1,000,000) per occurrence. This insurance shall provide coverage for personal injury (including emotional distress and mental anguish). Such Cyber Liability insurance coverage may be met through or combined with the Professional Liability

Insurance referenced in the above paragraph 4; however, if combined then the coverage requirement for Cyber Liability insurance shall be equal or greater than the combined aggregate

Pertaining to the above paragraphs 3, 4, and 5, if coverage is written on a claims made basis, such insurance shall be maintained in force at all times during the term of this Agreement and for a period of three (3) years thereafter for Services completed during the term of this Agreement. Additionally, if a sub-limit applies to any elements of coverage, the policy endorsement evidencing the coverage above must specify the coverage section and the amount of the sub-limit.

Providing and maintaining adequate insurance coverage described herein is a material obligation of the Contractor and is of the essence of this Contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract.

Subcontractors Insurance: The Contractor shall either require each Subcontractor to obtain and maintain Workers' Compensation Insurance, Commercial General Liability, and Professional Liability coverage similar to those required above in this section for the Contractor, or any other coverage deemed necessary to the successful performance of the Contract, or cover Subcontractors under the Contractor's policies. Such coverage shall be in effect at all times that a Subcontractor is performing Work under the Contract. The Contractor shall have responsibility to enforce Subcontractor compliance with these or similar insurance requirements; however, the Contractor shall upon request provide NCTA acceptable evidenced of insurance for any Subcontractor. The Contractor shall assume all reasonability for risks or casualties of every description, for any and all damage, loss or injury, to persons or property arising out of the nature of the Work, including but not limited to the negligence or failure of its Subcontractors (as well as Contractor's employees) to comply with Contract Documents.

3.5.7. Dispute Resolution

In the event of any dispute whatsoever arising out of or relating to the Contract Documents, the Work or the Project, the disputing party must furnish a written Notice to the other party, setting forth in detail the dispute. Such Notice must be addressed to the other party's Project Manager. Within five (5) Business Days after the receipt of the Notice by the receiving Project Manager, the two Project Managers shall meet in NCTA's offices to attempt to resolve the dispute. If the Project Managers cannot resolve the dispute then, within fourteen (14) Calendar Days after the date of written Notice by either Project Manager to the Executive Director of NCTA and the Project Principal, the Executive Director of NCTA and the Project Principal shall meet in NCTA's offices to attempt to resolve the dispute. If the Executive Director of NCTA and the Project Principal cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute, then either Party may pursue those remedies as allowed under this Contract.

3.5.8. Default

1. In the event any Services or Deliverable furnished by the Contractor during performance of any Contract Term fails to conform to any material requirement of the Contract specifications, Notice of the failure is provided by NCTA, and the failure is not cured within ten (10) Business Days, NCTA may cancel and procure the articles or Services from other sources; holding Contractor liable for any excess costs occasioned thereby, subject only to the limitations provided in the Contract and the

obligation to informally resolve disputes as provided in these Terms and Conditions. Default may be cause for debarment. NCTA reserves the right to require performance guaranties from the Contractor without expense to the State. The rights and remedies of NCTA provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. NCTA allows for ten (10) Business Days to rectify a problem and thirty (30) Calendar Days to cure a termination.

2. If Contractor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, NCTA may provide written Notice of said failure to Contractor, and by such Notice may require payment of a penalty.
3. Contractor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Contractor's offer documents that prove erroneous or are otherwise invalid.
4. Should NCTA fail to perform any of its obligations upon which Contractor's performance is conditioned, Contractor shall not be in default for any delay, cost increase or other consequences due to NCTA's failure. Any deadline that is affected by any such failure in assumptions or performance by NCTA shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
5. Contractor shall provide a Plan to cure any default or delay if requested by NCTA. The Plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Contractor may deem necessary or proper to provide.

3.5.9. Waiver of Default

Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of NCTA and the Contractor and made as an Amendment in accordance with the terms of this Contract.

3.5.10. General Indemnity

1. The Contractor shall hold and save NCTA, its officers, Agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, as normally construed, accruing or resulting to any other person, firm or corporation furnishing or supplying Work, Services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Contractor shall be conditioned upon the following:
 - a. NCTA shall give Contractor written Notice within thirty (30) Calendar Days after it has actual knowledge of any such claim(s) or action(s) filed; and
 - b. The Contractor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that NCTA shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

3.5.11. Changes

The Contract is awarded subject to the provision of the specified Services and the provision of other Deliverables as specified herein. Any changes made to the Contract proposed by the Contractor are hereby rejected unless accepted in writing by NCTA. NCTA shall not be responsible for Services or other Deliverables provided other than those specified in the Contract.

3.5.12. Time is of the Essence

Time is of the essence in the performance of this Contract. Contractor and NCTA will mutually develop and agree to a schedule of implementation, operation, etc. Contractor and Subcontractors will be required to adhere to the Approved schedule.

3.5.13. Independent Contractors

Contractor and its employees, officers and executives, and Subcontractors, if any, shall be independent Contractors and not employees or Agents of the State. This Contract shall not operate as a joint venture, partnership, trust, authority or any other business relationship.

3.5.14. Notices

Any Notices required under this Contract shall be delivered to the Contractor or NCTA be delivered in writing by U.S. Mail, Commercial Courier or by hand, unless otherwise specified in the Solicitation Documents.

3.5.15. Titles and Headings

Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

3.5.16. Amendment

This Contract may not be amended orally or by performance. Any Amendment must be made in written form and signed by duly authorized representatives of NCTA and Contractor in conformance with Contract Requirements.

3.5.17. Taxes

The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Contractor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for Federal or State taxes. Evidence of such additional exemptions or exclusions may be provided to Contractor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item and not included in the Price Proposal.

3.5.18. Governing Laws, Jurisdiction and Venue

1. This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Contractor agrees and

submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

2. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

3.5.19. Force Majeure

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Force Majeure events shall not otherwise limit NCTA's rights to enforce contracts.

3.5.20. Compliance with Laws

The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing Requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority.

3.5.21. Severability

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

3.5.22. Ineligible Contractors

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

3.5.23. Availability of Funds

Any and all payments to Contractor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to NCTA for the purposes set forth in this Contract. If this Contract is funded in whole or in part by Federal funds, the Agency's performance and payment shall be subject to and

contingent upon the continuing availability of said Federal funds for the purposes of the Contract. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Contractor. If the Contract is terminated under this paragraph, Contractor agrees to take back any affected Deliverables and Software not yet delivered under this Contract, terminate any Services supplied to the Agency under this Contract, and relieve NCTA of any further obligation thereof. The State shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid Notice in conformance with the payment terms.

3.5.24. E-Verify

Pursuant to G.S. § 143-133.3, the State shall not enter into a contract unless the awarded Contractor and each of its subcontractors comply with the E-Verify Requirements of N.C. General Statutes, Chapter 64, Article 2. Contractors are directed to review the foregoing laws. Any awarded Contractor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

3.5.25. Historically Underutilized Businesses

Pursuant to N.C.G.S. §§ 143-48 and 143-128.4 and any applicable Executive Order, the State of North Carolina and NCTA invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: <http://ncadmin.nc.gov/businesses/hub/>.

3.5.26. No Waiver

Notwithstanding any other language or provision in the Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to NCTA under applicable law. The waiver by NCTA 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.

3.5.27. Entire Agreement

1. This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda hereto, and the Contractor's Proposal Documents are incorporated herein by reference as though set forth verbatim.
2. 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.

3.5.28. 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 NCTA under applicable law.