

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

OFFER AND ACCEPTANCE

The State seeks information for the qualification of Software, Services and/or goods described in this request for qualification. The State's acceptance of any offer must be demonstrated by execution of the acceptance found below and any subsequent Request for Solicitation and Best and Final Offer, if issued.

EXECUTION

In compliance with this Solicitation and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services or goods upon which prices are offered, at the price(s) offered herein, within the time specified herein. By executing this offer, I certify that this offer is submitted competitively and without collusion.

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

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

Offer valid for thirty (30), days from date of offer opening unless otherwise stated here: ____ days

ACCEPTANCE OF OFFER

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

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

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1.0 INTENT, USE, DURATION AND SCOPE

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

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

Background

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

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

Anticipated Qualification Schedule

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

Action	Responsibility	Date
Request for Qualification Issued	Agency	8/30/24
Written Questions Deadline	Potential Vendors	9/12/24 (2:00PM EST)

Action	Responsibility	Date
Agency's Response to Written Questions of Qualification Addendum Issued	Agency	9/17/24 (2:00PM EST)
Vendor Submittal Opening Deadline	Vendor(s)	9/26/24 (2:00PM EST)
Qualification Evaluation	Agency	10/17/24
Qualification Announcement	Agency	10/18/24
Protest Deadline	Responding Vendors	15 days after award
State to Issue Scopes of Work for 2025 Project to subset of pre-qualified vendors	Agency	10/18/24
Cost proposal call with selected vendors	Agency and selected Vendors	10/23/24
Technical cost proposals due	Selected Vendors	11/12/24
Negotiations with Finalists (if necessary)	Agency designees and selected Vendor(s)	11/18/24
2025 Statewide Project Kickoff (tentative)	Agency and selected Vendors	1/9/25

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2.0 GENERAL INFORMATION

2.1. VENDOR QUESTIONS

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

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

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

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

2.2. ADDENDA

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

2.3. OFFER SUBMITTAL

Due Date: September 26, 2024
Time: 2:00PM Eastern Time

IMPORTANT NOTE: Vendor shall bear the risk for late submission due to unintended or unanticipated delay—whether submitted electronically, delivered by hand, U.S. Postal Service, courier or other delivery service. **Vendor must include all the pages of this solicitation in their response.** It is the Vendor's sole responsibility to ensure its offer has been delivered to this Office by the specified time and date of opening. Any proposal-delivered after the proposal deadline will be rejected.

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

sufficient cause to reject a Vendor's bids(s). Solicitation responses are subject to Sealed Bidding requirements.

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

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

Tips for Using the Sourcing Tool

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

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

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

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

a) All File names should start with the vendor's name first, in order to easily determine all the files to be included as part of the vendor's response. For example, files should be named as follows: Vendor Name-your file name.

b) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .jpeg, or png format, and shall be capable of being copied to other sources.

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

Prices and any other entry made hereon by the Vendor shall be considered firm and not subject to change.

2.4. BASIS FOR REJECTION

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

2.5. LATE SUBMITTALS

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

2.6. NON-RESPONSIVE OFFERS

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

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

2.7. NOTICE TO VENDORS

The State objects to and will not be required to evaluate or consider any additional terms and conditions not previously agreed to by the State and submitted with an Offeror's response. This applies to any language appearing in or attached to the document as part of the Offeror's response. By execution and delivery of this Solicitation and response(s), the Offeror agrees

that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

2.8. E-PROCUREMENT SOLICITATION

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

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

2.9. DISTRIBUTORS AND RESELLERS – RESERVED

2.10. POSSESSION AND REVIEW

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

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

2.11. BEST AND FINAL OFFERS (BAFO)

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

2.12. AWARD

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

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

2.13. POINTS OF CONTACT

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

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

2.14 SOURCE SELECTION FOR QUALIFICATION AND SUBSEQUENT SOLICITATIONS

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

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

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

2.15 EVALUATION CRITERIA FOR QUALIFICATION

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

- 1) Absolute and relative comparison of the Vendor's successfully completed projects, past performance on similar projects, and available capacity.
- 2) Absolute and relative comparison of the Vendor's specialized or appropriate expertise in the type of project. (How well the Vendor addresses the project scope Sections 5.1-5.4)
- 3) Absolute and relative comparison of the Vendor's adequate equipment, product storage and capacity.
- 4) Absolute and relative comparison of the Vendor's technical specification approaches. (Techniques and approaches that meet the specific geographic regions of our projects)

- 5) Absolute and relative comparison of the Vendor's adherence to Section 3.2 Security Specifications
- 6) Absolute and relative comparison of the Vendor's strength of references relevant or material to technology area(s) or Specifications (see Attachment A for submittal form) and Vendor Past Performance (The Vendor may be disqualified from any evaluation or award if the Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.)
- 7) Financial Stability
- 8) Risks associated with Vendor's offer including errata and exceptions of this request for qualification.

3.0 SPECIFICATIONS

3.1. VENDOR STANDARD AGREEMENT(S)

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

3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.

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

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

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

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

3.3. E-VERIFY

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

3.4 REQUIREMENTS AND SPECIFICATIONS SPECIFIC TO THIS SOLICITATION

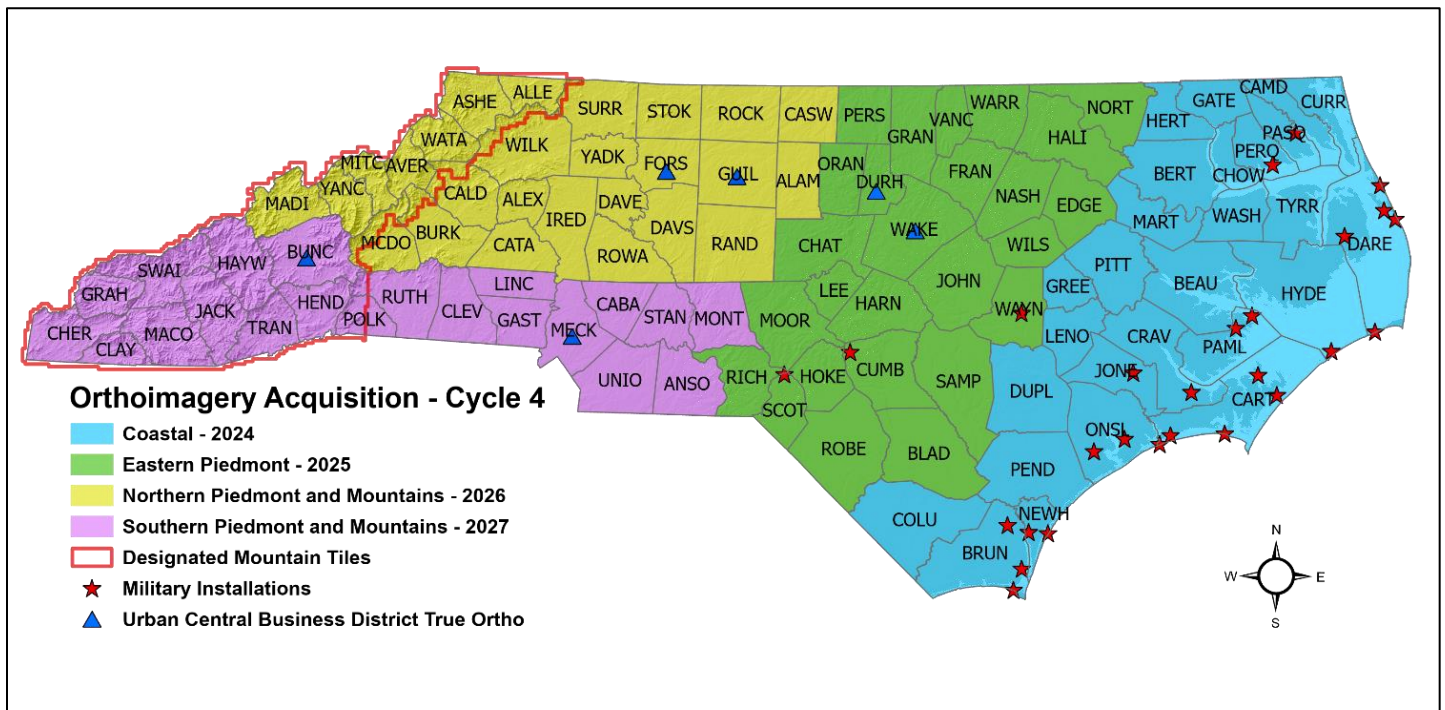


Figure 1: Orthoimagery Acquisition Cycle and Project Areas

a. Licensing Requirement

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

b. Orthoimagery Acquisition System Specifications

- The Vendor shall describe their capability of the prime Vendor's project team to secure appropriate equipment and to maintain adequate capacity for product storage and short-term repository to include the following: Vendor to provide with their prequalification offer a concise summary matrix of the following requirements:

1. All digital camera systems proposed and available.
 2. Proposed aircraft
 3. Factory Calibration Date
 4. Planned ground footprint dimensions in feet for cross track
 5. Planned ground footprint dimensions in feet for along track
 6. Approved for NC Validation Range (2012-2023) if available
- ii. Vendor to include with their prequalification offer the following information:
1. List equipment (field and office) and licensed software that are available and would be designated for use on this project. Include the description (type, version number, number of licenses).
 2. Identify aircraft, digital aerial camera systems, and GNSS-IMU systems used to acquire aerial imagery.
 3. Identify any planned maintenance outages for aircraft and planned conflicts for the acquisition period.
 4. Identify acquisition systems (changed digital camera, GNSS-IMU system, and aircraft combinations) planned for this project that were not approved from NC Validation Range flights for any of the 2012-2024 projects as follows:
 - a. ADS 100
 - b. DMC I
 - c. DMC II 140
 - d. DMC II 230
 - e. DMC II 250
 - f. DMC III
 - g. UltraCam Eagle 80
 - h. UltraCam Eagle 100
- iii. Identify the factory calibration date for all proposed digital camera systems.
- iv. Identify all potential operations bases for proposed aircraft and digital aerial camera systems.
- v. Identify proposed digital camera systems' planned ground footprint dimensions in feet for cross track and along track coverage based on capturing color digital imagery with a 6-inch pixel resolution at acquisition.

c. Control and Check Points Specifications

- i. Vendor to describe their ability to plan and survey sufficient ground control to use with airborne GNSS-IMU control to produce orthoimagery tiles that meet ASPRS horizontal

accuracy for 6-inch orthophotos, 1" = 100' scale with a limiting RMSE of 1.0 feet in each X and Y.

- ii. Describe ability to plan, survey and establish control point locations and submit a Control Surveys Report that shall be signed and sealed by the North Carolina PLS in responsible charge.

d. Flight Plan Methodology Specifications

- i. Vendor to describe experience developing and submitting a Flight and Control Plan based on the following flight planning specifications and evaluation criteria:
 1. Flight plan that minimizes overall cost to the state for the production and delivery of leaf-off, 6-inch, 4-band orthoimagery based on the proposed equipment and procedures.
 2. Describe approach for 2-D flight planning with flying height set to average mean elevation over the planned flight line.
 3. Describe approach for 3-D flight planning using a DEM that accounts for minimum and maximum ground sample distance resolution, minimum forward overlap, and minimum side overlap.
 4. Describe methods for ensuring minimum 33-degree sun angle during acquisition in non-mountain-designated tiles per Figure 1.
 5. Describe methods for ensuring minimum 38-degree sun angle during acquisition in mountain-designated tiles per Figure 1.
 6. Describe flight line orientation methods in mountain and non-mountain designated tiles.
 7. Describe ability to produce final products with the following Ground Sample Distance requirements:
 - a. Nadir Ground Sample Distance (GSD)
 - i. Nadir GSD shall be between 0.15 feet to 0.50 feet for 75% of planned exposures for frame-based cameras or pseudo exposures for push broom cameras.
 - ii. Nadir GSD shall not be less than 0.12 feet or greater than 0.53 feet of planned exposures or pseudo exposures for the push broom cameras.
 - iii. For push broom cameras, GSD nadir values will be computed at pseudo exposure station spacing along the flight line at 200-foot intervals.
 - b. Transportation Feature Ground Sample Distance (GSD)
 - i. Transportation feature GSD shall be between 0.15 feet to 0.55 feet for 98.0% of tested points.
 - ii. Transportation feature GSD shall not be less than 0.10 feet or greater than 0.60 feet.
 - iii. For push broom cameras, transportation feature GSD values will be computed at a distance not to exceed 100-foot spacing along the flight line.
 8. Describe ability and methods to ensure forward and side overlap coverage requirements:

- a. Forward overlap shall be planned at a minimum of 60%
- b. Side overlap shall be planned at a minimum of 30%
- c. The sum of void areas produced from intersecting the planned minimum reduced (F60/S30) image footprints with the terrain as compared to a defined area (stereo overlap, county, AT Block, or other area) shall be less than 0.10%
- d. Planned forward overlap shall not be less than a nominal 58% (based on maximum void area distance parallel to flight direction – see table below)
- e. Planned side overlap shall not be less than a nominal 28% (based on maximum void area distance perpendicular to flight direction – see table below)
- f. If a different digital camera system is being proposed other than the five identified here, then the response should include nominal 2% forward overlap and side overlap distance values assuming a 0.5 foot GSD.

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

- g. The principal points of the first two and the last two exposures of each flight strip shall fall outside the project area boundaries.
 - h. For pushbroom sensors, the flight design shall ensure the forward and aft imaging arrays coverage fall outside the ends of each strip to accommodate stereo viewing of the entire project area.
 - i. All side boundaries shall include an overlap at least equal to the side overlap specifications for the project.
9. Describe ability to conduct acceptable Validation Range mini-project for all acquisition systems proposed. Note, this task will not be required for acquisition systems (unchanged digital cameras) approved for Phases 1-4 of the 2016-2019, or Phases 1-4 of the 2020-2023, or Phase 1 of the 2024-2027 Orthoimagery Program cycle. Acceptance for each proposed digital camera system will be based on NCDOT's evaluation of NC validation range aerotriangulation and orthoimagery submission including QA/QC documentation and reports using NC's validation range and procedures. Specific information regarding these procedures can be found at <https://ncgs.state.nc.us/pages/Library.htm?DocType=ValidationRange>.

- ii. Describe methodology for developing True Orthoimagery Products
 - 1. Describe methods for ensuring minimum 38-degree sun angle during acquisition in True Orthoimagery designated areas.
 - 2. Describe flight line orientation methods for producing True Orthoimagery products in designated areas.
 - 3. Describe methods to meet requirements for nadir imagery acquisition minimum 80% forward and 80% side overlap to support True Orthoimagery generation.
 - iii. Describe coordination for all military engagement to access restricted airspace on military installations such as Air Force Base Seymour Johnson, Fort Liberty, and Camp Mackall.
- e. Imagery Acquisition, Exploitation Image Post Processing, Quality Assurance/Quality Control (QA/QC), and Reporting Specifications**
- i. Describe approach to perform color digital aerial imagery acquisition at a nominal pixel resolution of 0.5 feet following approved flight plan.
 - ii. Describe process to deliver a post-processed GNSS-IMU exterior orientation excel file for all acquired images for each and every sortie not to exceed five days after the flight date of each sortie. In addition to exterior orientation files for every sortie, describe additional documentation to support reflight assessment and conclusions for both missions marked for reflights and mission not marked as such.
 - iii. Describe exploitation image post-processing and radiometry matching to a target image provided by the project team.
 - 1. Vendor to describe how to perform exploitation image post-processing and provide 4-band 8-bit RGBIR sample exploitation images such that exploitation images are visually consistent and meet project specifications across all Study Areas.
 - 2. Vendor to describe how to process 4-band 8-bit TIF imagery tiles at specified locations to demonstrate the application of radiometry guidelines received after exploitation image submittal.
 - 3. Vendor to describe ability to finalize tonal processing adjustments such that resultant orthoimagery is visually consistent within each Study Area, with adjacent Study Areas of other vendors, and with existing imagery.
 - 4. Describe ability to deliver a web map service that conforms to the Open Geospatial Consortium Web Map Service (OGC WBS) version 1.3 specification to demonstrate both internal and external radiometry matching and visual consistency.
 - iv. Describe ability to submit an Imagery Acquisition Compliance Report per Aerotriangulation (AT) Block, which shall be signed and sealed by the NC PLS in responsible charge for the Study Area professional photogrammetric services. Image Acquisition Compliance Report submittals will be reviewed on the following:
 - 1. Actual acquired image forward overlap using a 55% minimum.
 - 2. Actual acquired image side overlap using a 25% minimum.
 - 3. Actual acquired image nadir GSD of 0.50 feet.
 - 4. Actual acquired image transportation feature GSD of 0.50 feet.

5. The principal points of the first two and the last two exposures of each flight strip shall fall outside the project area boundaries.
6. For push broom sensors, the flight design shall ensure the forward and aft imaging arrays coverage fall outside the ends of each strip to accommodate stereo viewing of the entire project area.
7. All side boundaries shall include an overlap at least equal to the side overlap specifications for the project.

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

- i. Describe performance of airborne GNSS-IMU post-processing.
- ii. Describe ability to deliver a post-processed GNSS-IMU exterior orientation excel file for all acquired images for each and every sortie not to exceed five days after the flight date of each sortie.
- iii. Describe aerotriangulation process using ground survey control and airborne GNSS-IMU control.
 1. Describe use of manual or autocorrelated pass and tie point image measurements.
 2. Describe use of image measurements for frame sensors at the 9 traditional Von Gruber locations per image.
 3. Describe use of previous project ground control points (GCP) and horizontal quality control (HQC) photo-id check points as independent check points in the initial AT solution.
- iv. Describe submission of a GNSS-IMU Post-Processing & AT Report for each AT Block, which is required to be signed and sealed by the NC PLS in responsible charge for the GNSS-IMU post-processing and AT portion of the Study Area professional photogrammetric services.
- v. Describe use of elevation data (as needed) at a density level sufficient to accurately represent the shape of the ground to produce orthoimagery free of distortions due to terrain, and that meets the required orthophoto accuracy standards.
- vi. Describe orthorectification using exploitation imagery, adjusted exterior orientation from AT and updated DEM elevation data to produce orthoimagery.
- vii. Describe seamline and elevation data editing to ensure accurate edge match between images and tiles; and also correction of image distortions and other artifacts caused by the orthorectification process.

g. Digital Imagery Quality Assurance/Quality Control (QA/QC), Product Delivery and Data Acceptance Specifications

- i. Vendor to describe macro level quality review steps to demonstrate adequate seamless orthoimagery that is visually consistent without distortions due to seamlines, elevation data, blurring, or other artifacts caused by the orthorectification process.
- ii. Describe ability to submit 4-band (RGBIR) TIFF files for all tiles assigned to an image service provider to facilitate end user quality review.

1. Images will be delivered as a pre-defined set of tiles applicable to a group of counties as defined by the project team in two-week intervals.
2. Images will be uncompressed GeoTIFF formatted ortho-rectified and referenced to the North Carolina State Plane Coordinate System, North American Datum (NAD83) (2011) epoch 2010.0 including a world file, GeoTIFF header version 6.0 as required by the State Standard.
- iii. Describe evaluation of quality review submitted issues and documentation of responses to those issues to demonstrate whether resolutions are practical or within scope.
- iv. Describe technical processes used to correct submitted issues.
- v. Describe delivery of final data to include:
 1. One set of uncompressed 4-band (RGBIR) GeoTIFF formatted ortho-rectified imagery tiles referenced to the North Carolina State Plane Coordinate System, North American Datum NAD83 (2011), including a world file, as required by the State Standard. Tiles also containing a GeoTIFF 6.0 header and using the file naming convention per the state standard.
 2. Orthoimagery Delivery Report pre-defined as a checklist of required items. This report is required to be signed and sealed by the North Carolina Professional Land Surveyor (PLS) in responsible charge.
 3. One fully attributed seamline polygon shapefile aligned with final delivery tiles and representative of all final seamline adjustments.
- vi. Describe ability to produce one FGDC compliant metadata record per county in both .xml and .txt file format that will meet the requirements to pass error-free through the USGS MP Parser online tool <http://geo-nsdi.er.usgs.gov/validation/>.
- vii. Describe resolution processes, including evaluation, correction, and re-submittal, for issues resulting from the field horizontal quality review performed by the NC Geodetic Survey after final delivery of imagery files.

h. Optional photogrammetry product capabilities Specifications

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

3.5. SECURITY SPECIFICATIONS

3.5.1 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

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

To comply with the State's Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls. This requirement additionally applies to all Vendor-provided, agency-managed Infrastructure as a Service

(IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) solutions which will handle data classified as Medium Risk (Restricted) or High Risk (Highly Restricted) data.

(a) Vendors shall provide a completed Vendor Readiness Assessment Report Non-State Hosted Solutions ("VRAR") at offer submission. This report is located at the following website: <https://it.nc.gov/documents/vendor-readiness-assessment-report>

(b) Upon request, Vendors shall provide a current independent 3rd party assessment report in accordance with the following subparagraphs (i)-(iii) prior to contract award. However, Vendors are encouraged to provide a current independent 3rd party assessment report in accordance with subparagraphs (i)-(iii) at the time of offer submission.

(i) Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, ISO 27001, or HITRUST are the preferred assessment reports for any Vendor solutions which will handle data classified as Medium Risk (Restricted) or High Risk (Highly Restricted).

(ii) A Vendor that cannot provide a preferred independent 3rd party assessment report as described above may submit an alternative assessment, such as a SOC 2 Type 1 assessment report. The Vendor shall provide an explanation for submitting the alternative assessment report. If awarded this contract, a Vendor who submits an alternative assessment report shall submit one of the preferred assessment reports no later than 365 days of the Effective Date of the contract. Timely submission of this preferred assessment report shall be a material requirement of the contract.

(iii) An IaaS vendor cannot provide a certification or assessment report for a SaaS provider UNLESS permitted by the terms of a written agreement between the two vendors and the scope of the IaaS certification or assessment report clearly includes the SaaS solution.

(c) Additional Security Documentation. Prior to contract award, the State may in its discretion require the Vendor to provide additional security documentation, including but not limited to vulnerability assessment reports and penetration test reports. The awarded Vendor shall provide such additional security documentation upon request by the State during the term of the contract.

3.6 ENTERPRISE ARCHITECTURE SPECIFICATIONS

ENTERPRISE, SERVICES, AND STANDARDS

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

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

3.6.1 ARCHITECTURE DIAGRAMS

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

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

3.6.2 SOLUTION ROADMAP

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

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

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

3.6.3 IDENTITY AND ACCESS MANAGEMENT

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

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

3.6.4 INTEGRATION APPROACH

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

3.6.5 DISASTER RECOVERY AND BUSINESS CONTINUITY

Describe the proposed solution capabilities related to the following areas:

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

System Backup – describe backup plan capabilities.

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

3.6.6 DATA MIGRATION

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

3.6.7 APPLICATION MANAGEMENT – RESERVED

3.6.8 ACCESSIBILITY

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

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

Standards include:

- W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1:
<https://www.w3.org/TR/WCAG21/>

- Section 508: <https://www.section508.gov/>
- Voluntary Product Accessibility Template (VPAT®): <https://www.itic.org/policy/accessibility/vpat>

3.7. BRAND SPECIFIC PRODUCT – RESERVED

3.8. DELIVERY-RESERVED

3.9. CONTRACT TERM

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

3.10 EFFECTIVE DATE OF QUALIFICATION

This request for qualification, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective qualification date will be one (1) year from the date the Vendors are qualified. The qualification commences on the date the Vendor receives the notice that they are qualified and is valid and effective for one (1) year after that date.

4.0 FURNISH AND DELIVER-RESERVED

5.0 HISTORICALLY UNDERUTILIZED BUSINESSES

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

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

Is Vendor a Historically Underutilized Business? ☐ YES ☐ NO

If “YES”, specify classification. _____

6.0 DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS

1) **READ, REVIEW AND COMPLY:** It shall be the Vendor’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.

2) DEFINITIONS:

- **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
- **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
- **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
- **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite

minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price

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

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

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

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

7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS **APPLICABLE TO CONTRACTS WRITTEN AS A RESULT OF THIS PRE-QUALIFICATION**

1) DEFINITIONS:

- a) "Data" includes means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- b) Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State as included in Paragraph 7) c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- c) "Services" shall mean the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this solicitation, including, without limitation, providing web browser access by authorized users to certain Vendor online software applications identified herein, and to related services, such as Vendor hosted Computer storage, databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.
- d) "State" shall mean the State of North Carolina, the Department of Information Technology as an agency, or the agency identified in this solicitation as the Purchasing Agency and Award Authority.
- e) "Support" includes provision of ongoing updates and maintenance for the Vendor online software applications, and as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

2) ACCESS AND USE OF SAAS SERVICES:

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, *et. seq.*
- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use the State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- c) Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's SaaS tenants for similar Services. Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.

- d) Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third-party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.
- e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.
- f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, so long as the State Data is not removed from the United States unless the terms of storage of the State Data are clearly disclosed, the security provisions referenced herein can still be complied with, and such removal is done with the prior express written permission of the State. The Vendor shall identify all of its strategic business partners related to Services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.
- g) Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with the Services documentation and this Agreement.
- h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.
- i) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

3) WARRANTY OF NON-INFRINGEMENT; REMEDIES.

- a) Vendor warrants to the best of its knowledge that:
 - i) The Services do not infringe any intellectual property rights of any third party; and
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b) Should any Services supplied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the Services, or replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected Services, and refund any sums the State has paid Vendor and make every reasonable effort to assist the State in procuring substitute Services. If, in the sole opinion of the State, the cessation of use by the State of any such Services due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services supplied by the Vendor, their use or operation, infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's material alteration of any Vendor-branded Services, or from the continued use of the good(s) or Services after receiving notice they infringe on a trade secret of a third party.

4) ACCESS AVAILABILITY; REMEDIES-RESERVED

5) EXCLUSIONS:

- a) Except as stated above in Paragraphs 3 and 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to the Services.
- b) The warranties provided in Paragraphs 3 and 4 above do not cover repair for damages, malfunctions or service failures substantially caused by:
 - i) Actions of non-Vendor personnel;
 - ii) Failure to follow Vendor's written instructions relating to the Services provided to the State; or
 - iii) Force Majeure conditions set forth hereinbelow.
 - iv) The State's sole misuse of, or its own inability to use, the Services.

6) PERFORMANCE REVIEW AND ACCOUNTABILITY. N.C.G.S. § 143B-1340(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of 10% of the contract value and withholding the final payment contingent on final acceptance by the State as provided in 09 NCAC 06B.1207(3) and (4), unless waived or otherwise agreed, in writing. The Services herein will be provided consistent with and under these Services performance review and accountability guarantees.

7) LIMITATION OF LIABILITY: Limitation of Vendor's Contract Damages Liability:

- a) Where Services are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Services and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Services.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 et seq., the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

8) VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, 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 Agreement, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.

9) MODIFICATION OF SERVICES: If Vendor modifies or replaces the Services provided to the State and other tenants, and if the State has paid all applicable Subscription Fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.

10) TRANSITION PERIOD:

- a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").

- b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.
 - c) During the Transition Period, Services access shall continue to be made available to the State without alteration.
 - d) Vendor agrees to compensate the State for damages or losses the State incurs as a result of Vendor's failure to comply with this Transition Period section in accordance with the Limitation of Liability provisions above.
 - e) Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
 - f) The State at its option, may purchase additional Transition services as may be agreed upon in a supplemental agreement.
- 11) TRANSPORTATION:** Transportation charges for any Deliverable sent to the State other than electronically or by download, shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.
- 12) TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses specifically agreed to in writing and arising under the performance of this Agreement, reimbursement will be at the out-of-state rates set forth in G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.
- 13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements with the Vendor. Violations of this provision may result in debarment of the Vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1207, or other provision of law.
- 14) AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the State for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the State will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to terminate any Services supplied to the State under this Agreement, and relieve the State of any further obligation thereof. The State shall remit payment for Services accepted on or prior to the date of the aforesaid notice in conformance with the payment terms.
- 15) PAYMENT TERMS:**
- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein, but shall not increase more than 5% over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.
 - b) Upon Vendor's written request of not less than 30 days and approval by the State, the State may:
 - i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - ii) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however,

- iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c) For any third party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon Vendor's receipt of a disputed invoice notice, Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- e) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.

16) ACCEPTANCE CRITERIA:

- a) Initial acceptance testing is required for all Vendor supplied Services before going live, unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of Services may be controlled by additional written terms as agreed by the parties.
- b) After initial acceptance of Services, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following provision of any Deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State of any Vendor re-performance or correction shall not be unreasonably withheld, but may be conditioned or delayed as required for confirmation by the State that the issue(s) in the notice have been successfully corrected.

17) CONFIDENTIALITY: The State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1, *et seq.* Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate information, Products, Services or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, or portion of a page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked "confidential" meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked "confidential," the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

18) SECURITY OF STATE DATA:

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the

performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.

- b) The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within 24 hours of confirmation as required by N.C.G.S. § 143B-1379.
- d) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.
- e) The Vendor shall certify to the State:
 - i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
 - ii) That the system used to provide the Subscription Services under this Contract has and will maintain a valid 3rd party security certification not to exceed 1 year and is consistent with the data classification level and a security controls appropriate for low or moderate information system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4. The State reserves the right to independently evaluate, audit, and verify such requirements.
 - iii) That the Services will comply with the following:
 - (1) Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policy Manual; to include encryption requirements as defined below:
 - (a) The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
 - (b) For engagements where the Vendor stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Vendor's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. Additionally, where encryption of data at rest is not possible, the Vendor must describe existing security measures that provide a similar level of protection;
 - (2) Privacy provisions of the Federal Privacy Act of 1974;
 - (3) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75-65 and -66);
 - (4) The North Carolina Public Records Act, N.C.G.S. Chapter 132; and
 - (5) Applicable Federal, State and industry standards and guidelines including, but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the

(6) Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.

- f) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.
- g) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- h) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
- i) Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- j) In the course of normal operations, it may become necessary for Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Remote access to Data from outside the continental United States, including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.

- l) In the event of temporary loss of access to Services, Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:
 - (1) The scale and quantity of the State Data loss;
 - (2) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
 - (3) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
 - (4) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

Vendor shall investigate of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the State, its agents and law enforcement.
- n) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
- o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.

19) ACCESS TO PERSONS AND RECORDS: Pursuant to N.C. General Statute 147-64.7, the State, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any State, if in the State's opinion, such requirement is imposed by federal or state law or regulation. The Vendor shall allow the State to audit conformance including contract terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least 30 days' advance written notice and shall not unreasonably interfere with the Service Provider's business.

20) ASSIGNMENT: Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days of any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

21) NOTICES: Any notices required under this Agreement should be delivered to the Agreement Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.

22) TITLES AND HEADINGS: Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

23) AMENDMENT: This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.

- 24) TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
- 25) GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
- 26) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the material requirements and specifications herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a. If Vendor fails to deliver or provide correct Services within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide Services or other Deliverables.
 - b. Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such Vendor failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure. Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- 27) FORCE MAJEURE:** Except as provided for herein, 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.
- 28) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and the provision of Services hereunder, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 29) TERMINATION:** Any notice or termination made under this Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. The parties may mutually terminate this Agreement by written agreement at any time.
- a) The State may terminate this Agreement, in whole or in part, pursuant to the Paragraph entitled "Default," above, or pursuant to Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following
 - i) Termination for Cause: In the event any goods, Services, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Agreement, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7), entitled "Limitation of Liability." The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
 - ii) Termination for Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Services performed in conformance with the Agreement. In the

event the Agreement is terminated for the convenience of the State the State will pay for all Services and work performed or delivered in conformance with the Agreement up to the date of termination.

- 30) DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Agreement Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
- 31) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 32) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the State shall be entitled to any and all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.
- 33) ELECTRONIC PROCUREMENT:** (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract. The E-Procurement fee does not normally apply to services.
- a) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Agreement. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.
 - b) Vendor agrees at all times to maintain the confidentiality of its username and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

ATTACHMENT A: REFERENCES

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

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

For each reference, the Vendor shall provide the following information: Customer name.

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