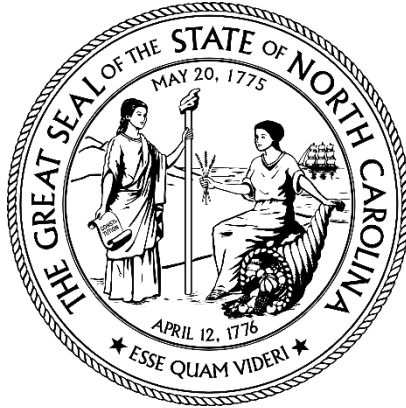




STATE OF NORTH CAROLINA

Department of Environmental Quality

Request for Proposal #: 16-2334842570

Natural Infrastructure Flood Mitigation Projects located in Cape Fear, French Broad, Lumber, Neuse, Tar-Pamlico, and White Oak River Basins

Date of Issue: September 3, 2026

Proposal Opening Date: March 2, 2027

At 2:00 PM ET

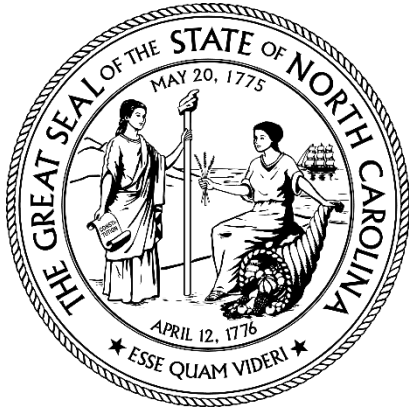
Direct all inquiries concerning this RFP to:

Kristie Corson

Contracts Manager

Email: Kristie.Corson@deq.nc.gov

Phone: 919-707-8935



STATE OF NORTH CAROLINA

Request for Proposal

16-2334842570

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

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

Vendor Name

Vendor eVP#

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

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

STATE OF NORTH CAROLINA Division of Mitigation Services

Refer <u>ALL</u> Inquiries regarding this RFP to the Procurement Lead through the Message Board in the Sourcing Tool. See section 2.6 for details:	Request for Proposal #: 16-2334842570
	Proposals will be publicly opened: March 2, 2027 @ 2:00 PM EST
Using Agency: DEQ Division of Mitigation Services	Commodity No. and Description: 7017 Water Resources Development and Oversight
Requisition No.: n/a	

EXECUTION

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

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

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

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

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

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

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

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

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

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

COMPLETE/FORMAL NAME OF VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #21):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		

Proposal Number: 16-2334842570

Vendor: _____

VENDOR'S AUTHORIZED SIGNATURE*:	DATE:	EMAIL:

VALIDITY PERIOD

Offer shall be valid for 180 days from date of bid opening, or if extended by mutual agreement of the parties in writing. Any withdrawal of this offer shall be made in writing, effective upon receipt by the agency issuing this RFP.

ACCEPTANCE OF PROPOSAL

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

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

The attached certification, by _____.

(Authorized Representative of Department of Environmental Quality)

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1.0 PURPOSE AND BACKGROUND

In 2020, the NC General Assembly created the Natural Infrastructure Flood Mitigation Program (NIFMP) within DMS, incorporating flood storage capacity enhancement projects into the division's activities (G.S. 143-214.11A). The legislation also requires that pilot projects serve as the basis for expanding natural infrastructure flood mitigation projects to additional watersheds and scaling solutions to enhance community resiliency across North Carolina.

The 2021 Appropriations Act further supported this mission by setting aside \$3.5 million to create pilot projects addressing chronic flooding in the Stoney Creek watershed (SL 2021-180). In 2023, the legislature allocated an additional \$5 million to expand the Stoney Creek pilot efforts (SL 2023-134).

In 2022, the Flood Resiliency Blueprint (Blueprint) received funds for flood mitigation strategies (SL 2022-43) in the Cape Fear, Lumber, Neuse, Tar-Pamlico, and White Oak River basins. The Blueprint identified the NIFMP as a cost-effective strategy to improve flood resiliency.

As per Section 5.2.(c) of SL 2024-32, contracts issued for the development and implementation of the Flood Resiliency Blueprint have been exempted from Articles 3 and 3C of Chapter 143 of the General Statutes. Any duties, actions or responsibilities in this RFP previously fulfilled by the Division of Purchase and Contract under these Articles will be managed by the Department of Environmental Quality.

This solicitation is seeking to develop one or more nature-based, natural infrastructure projects to address chronic flooding in any of the following river basins: Cape Fear, French Broad, Lumber, Neuse, Tar-Pamlico, and White Oak.

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

1.1 CONTRACT TERM

The Contract shall have an initial term of five (5) years, beginning on the date of final Contract execution (the "Effective Date").

At the end of the Contract's initial term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to three (3) additional one-year terms. The State will give the Vendor written notice of its intent to exercise each option no later than sixty (60) days before the end of the Contract's then-current term. In addition to any optional renewal terms, and with the Vendor's concurrence, the State reserves the right to extend the Contract after the last active term.

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

2.0 GENERAL INFORMATION

2.1 REQUEST FOR PROPOSAL DOCUMENT

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

2.2 E-PROCUREMENT FEE

ATTENTION: This is an NC eProcurement solicitation facilitated by the Ariba Network. The E-Procurement fee may apply to this solicitation. See the paragraph entitled ELECTRONIC PROCUREMENT of the North Carolina General Terms and Conditions.

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

What is the Ariba Network?

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

For training on how to use the Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site:

<http://eprocurement.nc.gov/training/vendor-training>.

2.3 NOTICE TO VENDORS REGARDING RFP TERMS AND CONDITIONS

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

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

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

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

2.4 RFP SCHEDULE

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

Event	Responsibility	Date and Time
Issue RFP	State	September 3, 2026
Hold Pre-Proposal Conference	State	9/29/2026 @ 10:00 AM EST RFP 16-2334842570 NIFMP bid opening Meeting-Join Microsoft Teams
Submit Written Questions	Vendor	October 16, 2026 @ 5:00 PM EST
Submit Proposals	Vendor	March 2, 2027 @ 2:00 PM EST RFP 16-2334842570 NIFMP bid opening Meeting-Join Microsoft Teams
Contract Award	State	TBD

2.5 PRE-PROPOSAL CONFERENCE

Mandatory Pre-Proposal Conference

Date: 9/29/2026
 Time: 10:00 AM Eastern Time
 Location: [RFP 16-2334842570 NIFMP bid opening | Meeting-Join | Microsoft Teams](#)
 Contact #: Kristie Corson 919-707-8935

Instructions: It shall be MANDATORY that a representative from each Vendor be present for a pre-proposal conference. Attendees must arrive promptly. All attendees must "sign in" upon arrival and clearly indicate each prospective Vendor represented in the

MS TEAMS chat. DMS will state in the chat when the prompt cut-off deadline of the start time has been reached. LATE ARRIVALS WILL NOT BE ALLOWED TO "SIGN IN" OR PARTICIPATE IN THE PRE-PROPOSAL CONFERENCE, NOR SHALL THEIR PROPOSAL BE CONSIDERED. Once the sign-in process is complete, all other people wishing to attend may do so to the extent that space and circumstances allow.

FAILURE TO ATTEND THE MANDATORY PRE-PROPOSAL CONFERENCE SHALL RESULT IN VENDOR'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND NOT CONSIDERED FOR AWARD.

The purpose of this conference is for all prospective Vendors to apprise themselves of the conditions and requirements which will affect the performance of the work called for by this RFP. Vendors must stay for the duration of the conference. No allowances will be made for unreported conditions that a prudent Vendor would recognize as affecting the work called for or implied by this RFP.

Vendors are cautioned that any information released to attendees during the conference, other than that involving the physical aspects of the facility referenced above, and which conflicts with, supersedes, or adds to requirements in this RFP, must be confirmed by written addendum before it can be considered to be a part of this RFP and any resulting contract.

2.6 PROPOSAL QUESTIONS

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

Questions related to the content of the solicitation, or the procurement process should be directed to the person on the title page of this document via the Sourcing Tool's message board by the date and time specified in the RFP SCHEDULE Section of this RFP. Vendors will enter "**RFP # 16-2334842570 – Questions**" as the subject of the message. Question submittals should include a reference to the applicable RFP section. This is the only manner in which questions will be received.

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

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

2.7 PROPOSAL SUBMITTAL

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

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

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

Tips for Using the Sourcing Tool

1. Vendors should review available training and confirm that they are able to access the Sourcing Event, enter responses, and upload files well in advance of the date and time response are due to allow sufficient time to seek assistance from the North Carolina eProcurement Help Desk.

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

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

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

2.8 PROPOSAL CONTENTS

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

Vendor's Proposal (pdf) shall include the following items and attachments in the Sourcing Tool:

- a) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.
- b) Completed and signed version of all EXECUTION PAGES, along with the body of the RFP in its entirety.
- c) Signed receipt pages of any addenda released in conjunction with this RFP, if required to be returned.
- d) Vendor's Proposal addressing all Specifications of this RFP.
 - i. Technical Approach (RFP Section 5.6)
 - ii. Pricing (RFP Section 4.1)
 - iii. Vendor Corporate Background and Experience (RFP Section 4.4)
 - iii. Project Organization (RFP Section 5.5)
 - iv. References (RFP Section 4.5)
- e) Completed version of ATTACHMENT A: PRICING
- f) Completed version of ATTACHMENT E: CUSTOMER REFERENCE FORM
- g) Completed version of ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR
- h) Completed and signed version of ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION

2.9 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

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

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

Community: for the purposes of this document, community is not only a unified body of individuals, such as a group with common interest living in a particular area, but also includes local governments (villages, towns, cities, tribal areas, and counties).

Compound Flooding: A phenomenon in which two or more flooding sources occur simultaneously or subsequently within a short period of time. The most common type of compound flooding—a combination of storm surge and riverine flooding—can produce floodwaters that are longer in duration and more widespread than anticipated.

Dam and Levee Flooding: occurs when a dam or levee fails to contain floodwater. The failure can result from floodwater overtopping the dam or levee as well as if the dam or levee experiences a structural failure, or breach, resulting in a release of floodwater.

Financial Assurance – Financial security assuring the ability of the vendor to provide to construct the proposed project. Financial Assurance must be provided through Performance Bonds, Letters of Credit or Casualty Insurance.

Flood Mitigation: Any practice that reduces the overall risk of flood damage and loss or reduces the severity of flood damage when it occurs.

Flood Storage Project: a project that creates or restores a quantity of flood storage capacity expressed in acre-feet. A flood storage project includes, but is not limited to, the creation or restoration of wetlands, stream and riparian areas, temporary flooding of fields, pastures, or forests, and other nature-based projects that can demonstrably increase flood capacity.

Memorandum of Understanding (MOU): A legally binding document negotiated between DEQ and other agencies of state, federal, and local governments, and private non-profit entities to provide an exchange of services or to describe the conditions under which one entity will provide services for another entity in return for payment. MOUs are signed by the parties to the agreement. Other names for MOUs are Memorandum of Agreement (MOA) and Letter of Intent (LOI); however, MOU is used in the NC Administrative Code and DEQ.

National Flood Insurance Program (NFIP): The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations promulgated in Title 44 of the Code of Federal Regulations, Subchapter B.

Natural Infrastructure Flood Mitigation Program (NIFMP): authorized by the North Carolina General Assembly in 2020, the program within DMS that seeks to incorporate flood storage capacity enhancement and nature-based solution projects into the division's activities.

Nature-based Solutions (NBS): Also referred to as “nature-based or natural infrastructure;” an approach that uses natural systems or processes to provide flood mitigation, such as wetlands for flood storage or coastal marsh to reduce the impact of waves, storm surge, and coastal erosion.

North Carolina Flood Resiliency Blueprint (Blueprint): the North Carolina Flood Resiliency Blueprint is a statewide initiative designed to bring together and build upon all relevant existing resources and knowledge in the state to create one unified effort to increase community resiliency to flooding. The Blueprint includes a statewide flood planning framework and decision-support tool that enables state, tribal, regional, and local entities, and their stakeholders to identify, prioritize, and direct resources to implement effective flood resiliency strategies based on the best available science and understanding of likely future conditions. The Blueprint serves as the backbone of North Carolina’s flood planning process through the development and implementation river basin specific flood resiliency strategies.

Pluvial Flooding: Commonly referred to as “flash floods,” principally caused by downpours in areas without adequate drainage, by removal of natural storage functions, or by modification of natural drainage.

Riverine Flooding: Fluvial, or riverine flooding, occurs when excessive rainfall over an extended period causes a river to exceed its channel capacity.

Storm Water Control Measure: A permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration or mimic the natural hydrologic cycle by promoting infiltration, evapotranspiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

Stormwater wetlands: Reduces flooding by storing water and releasing it slowly. They can also be modified so that stored water can be released prior to a rain event to increase storage capacity for a forecasted flood event (e.g., hurricanes).

Watershed: An area of land that contains a common set of waterbodies (streams, rivers, lakes, or wetlands) that all drain into a single larger body of water. Watersheds can be defined at multiple geographic scales. In North Carolina, 17 “major” watersheds (basins) are defined by statute.

3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS

3.1 METHOD OF AWARD

North Carolina G.S. 143-52 provides a general list of criteria the State shall use to award contracts, as supplemented by the additional criteria herein. The Goods or Services being procured shall dictate the application and order of criteria; however, all award decisions shall be in the State’s best interest. All qualified proposals will be evaluated, and awards will be made to the Vendor(s) meeting the specific RFP Specifications and achieving the highest and best final evaluation, based on the criteria described below.

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

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

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

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

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

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

3.3 PROPOSAL EVALUATION PROCESS

Only responsive submissions will be evaluated.

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

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

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

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

At their sole option, the evaluators may request oral presentations or discussions with any or all Vendors for the purpose of clarification or to amplify the materials presented in any part of the proposal. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not.

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

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

3.4 EVALUATION CRITERIA

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

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

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

EVALUTION METHOD: Narrative and by consensus of the evaluating committee, explaining the strengths and weaknesses of each proposal and why the recommended awardee(s) provide the best value to the State.

All qualified proposals will be evaluated, and award made based on considering the following criteria listed in descending order of importance, to result in an award most advantageous to the State:

1. Vendor Technical Approach (RFP Section 5.6)

2. Pricing (RFP Section 4.1)
3. Vendor Corporate Background and Experience (RFP Section 4.4)
4. Project Organization (RFP Section 5.5)
5. References (RFP Section 4.5)

3.5 PERFORMANCE OUTSIDE THE UNITED STATES

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

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

3.6 INTERPRETATION OF TERMS AND PHRASES

This RFP serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the State; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether proposals should be evaluated or rejected, the State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the State's needs as described in the RFP. Except as specifically stated in the RFP, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the State exercising its discretion to reject a proposal in its entirety.

4.0 REQUIREMENTS

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

4.1 PRICING

Proposal price shall constitute the total cost to the State for complete performance in accordance with the requirements and specifications herein, including all applicable charges for handling, transportation, administrative and other similar fees. Complete ATTACHMENT A: PRICING FORM and upload in the Sourcing Tool. The pricing provided in ATTACHMENT A, or resulting from any negotiations, is incorporated herein and shall become part of any resulting Contract.

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

4.1.1 Import Tariff Temporary Surcharge

Pricing shall be exclusive of any pending tariffs or temporary tariff surcharge. Vendor may request a temporary tariff surcharge in ATTACHMENT A: PRICING SUBMITTAL WORKBOOK as a charge separate from the contract price. Any temporary tariff surcharge(s) associated with purchases shall be provided by way of a percentage tariff surcharge. All tariff surcharges proposed are intended to be temporary and based on current tariff implications specific to related commodities with evidence of submitted documentation of affected MSRP products. Vendor understands that the agency may request additional justification. Any

temporary tariff surcharge percentage will be negotiated and mutually agreed upon. The state is not obligated to accept any proposed import tariff surcharge. Proposed tariff surcharges may be used as a factor for evaluation and award.

4.2 FINANCIAL STABILITY

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

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

4.3 FINANCIAL ASSURANCE

The vendor must provide financial assurance in one of the following forms:

- a) Performance Bonding - The vendor must provide security in the form of an acceptable performance bond as described in the following paragraph to guarantee delivery of the contracted flood mitigation project. The performance bond must be obtained from a company licensed in North Carolina as shown in the Federal Treasury Listing of Approved Sureties (Circular 570). The maximum allowable amount provided by a surety may not exceed the "underwriting limitation" for the surety as identified in the Federal Treasury Listing. Although this RFP is a request for flood mitigation and not construction, the performance bond shall follow the prescribed wording provided in N.C.G.S. § 44A-33. The performance bond must be for 55% of the total value of the contract and must be in effect and submitted with the Task 4 deliverable before DMS will authorize payment for that deliverable. The bond must remain in effect until the vendor has received written notification from the DMS that the requirements of Task 6 (submittal of baseline monitoring report & As-Built Drawings) have been met (the financial assurance document must indicate that it is in effect through approval of task 4 by DMS and must include the NCDEQ contract number). After the successful completion of Task 6, the bond can be retired.
- b) Letters of Credit - LOCs must be drawn from a reputable bank identified by the FDIC as "Well Capitalized" or "Adequately Capitalized" and follow the submittal timing, contract amounts and schedules for reduction as those described above for the performance bonds. Evergreen or irrevocable LOCs shall be required to provide a 120-day notice of cancellation, termination, or non-renewal.
- c) Casualty Insurance - on underlying performance of the flood mitigation project, must follow the same submittal timing, contract amounts and reduction schedules as those described above in performance bonds. The insurance must contain the following information:
 - i. The "NCDEQ DMS," the contract number and the Insured Property must be named in the insurance document. NCDEQ shall have the sole right to place a claim against the policy;
 - ii. Casualty Insurance can be written effective for one year, but notice from the Vendor, stating that it is currently in the process of replacing the current policy, must be submitted to NCDMS at least one month before policy expiration date.

4.4 VENDOR CORPORATE BACKGROUND AND EXPERIENCE

In its Proposal, Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State. Vendor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

4.4.1 Vendor Corporate Background

Vendor shall provide background information on its firm (the prime firm) to include the firm's ability to carry out all phases of the proposal, information and experience concerning nature-based, natural infrastructure projects to address chronic flooding, federal & state regulations, the firm's office location(s), and the experience of the project manager. (Unless noted, all experience must be within the past 10 years).

4.4.2 Vendor Experience

In its Proposal, Vendor shall demonstrate their and their sub vendors, a minimum of five (5) years of experience in nature-based, natural infrastructure projects to address chronic flooding. (Unless noted, all experience must be within the past 10 years):

Demonstrate specialized or appropriate expertise in flood mitigation projects, including, but not limited to, natural infrastructure, structural stormwater conveyance systems, stormwater control measures (SCMs), regenerative stormwater conveyance systems, stormwater control retrofits and stream, wetland, riparian buffer and nutrient offset restoration and enhancement projects.

Describe the project team's knowledge and experience with State of NC flood mitigation and stormwater control design, implementation, monitoring and maintenance requirements, guidelines, protocols, and credit generation (e.g., designing and implementing stormwater control projects to meet local detention requirements for development and/or designing and implementing stormwater retrofits to address local flooding issues):

- a. Demonstrate applicable specialized or appropriate expertise in flood modeling (hydrologic and hydraulic) at multiple scales, such as:
 - i. Applications suitable for multiscale watershed-level screening and hazard identification based on multiple recurrence intervals (e.g., 1,2,5,10,20,50 year)
 - ii. Applications suitable for multivariable flood mitigation project identification, prioritization, and selection
 - iii. Modeling of various flooding types (riverine, coastal, and pluvial flooding)
 - iv. Modeling of compound flooding events
 - v. Modeling of future flood events as influenced by the projected effects of climate change
 - vi. Modeling future flood events based on increases or decreases in unmanaged stormwater runoff from impervious services
 - vii. Modeling stormwater detention requirement or incentive alternatives in flood-prone environments
 - viii. Modelling for multivariable alternative cost benefit analysis to assist decision makers with selecting projects, incentives, and restrictions, and other flood resiliency approaches for various storm events.
- b. Describe knowledge and experience with current Federal and State of NC regulations and policy that currently regulate, incentivize, or limit the State's ability to implement nature-based, natural infrastructure projects to address chronic flooding, such as:
 - i. FEMA's National Flood Insurance Program (NFIP) (Floodplain Development Permitting)
 - ii. Waters of the United States (WOTUS)
 - iii. State of North Carolina Hazard Mitigation Plan
 - iv. North Carolina Climate Risk Assessment and Resilience Plan
 - v. North Carolina and local floodplain building code(s)
 - vi. North Carolina and local floodplain development permitting
 - vii. North Carolina Drainage Districts
 - viii. North Carolina Erosion and Sediment Control Planning and Design Manual
- c. Describe applicable experience leading watershed-scale flood resilience strategy and project implementation, such as:

- i. Watershed flood risk evaluation (riverine, pluvial) for community assets
- ii. Flood resilience planning for infrastructure (roads, bridges, water treatment, stormwater, energy, etc.)
- iii. Utilizing existing relevant data (local and regional watershed and resiliency plans, historic, current, and future climate, and flooding data, NCDOT, academic and Non-Government Organizations (NGO) existing plans within this watershed)

4.5 REFERENCES

Vendor shall upload to the Sourcing Tool at least three (3) references, using ATTACHMENT E: CUSTOMER REFERENCE FORM, for which it has provided Services of similar size and scope to those proposed herein. References shall not be from the same company or from the solicitation State entity. In addition, Vendor shall provide references for and identify other government contracts it has received, for which your company has provided services of similar size and scope to those proposed herein. The State may contact these users to determine whether the Services provided are substantially similar in scope to those proposed herein and whether Vendor's performance has been satisfactory. The information obtained may be considered in the evaluation of the Proposal.

4.6 BACKGROUND CHECKS

Any personnel or agent of Vendor performing Services under any Contract arising from this RFP may be required to undergo a background check at the expense of the Vendor, if so requested by the State.

4.7 PERSONNEL

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

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

4.8 VENDOR'S REPRESENTATIONS

If Vendor's Proposal results in an award, Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under the Contract. If any Services, deliverables, functions, or responsibilities not specifically described in this solicitation are required for Vendor's proper performance, provision and delivery of the Service and deliverables under a resulting Contract, or are an inherent part of or necessary sub-task included within such Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and/or other Deliverables.

4.9 SUBCONTRACTORS

No portion of the work shall be subcontracted without prior written consent of the State. In the event that the Vendor desires to subcontract some part of the work specified herein, the Vendor shall furnish with their bid the names, qualifications, and

experience of their proposed subcontractors. The Vendor shall, however, remain solely and fully liable and responsible for the work done by its subcontractor(s) and shall assure compliance with all the requirements and specifications of the contract.

4.10 SECRETARY OF STATE REGISTRATION

Prior to entering into a contract with the State, the awarded Vendor(s) must complete registration with the NC Secretary of State. Upon notification of award, the selected Vendor(s) must furnish evidence of filing within 10 business days. Failure to provide this documentation may result in the disqualification of the Vendor(s) bid from further consideration for the award. No purchase orders shall be issued prior to confirmation of completed registration with the Secretary of State.

A contract award under the above-referenced solicitation, and the resulting purchase orders, will produce repeated orders and transactions in North Carolina and will constitute “transacting business” in the State, which requires a certificate of authority from the North Carolina Secretary of State as provided in G.S. §55-15-01 (corporations) or §57D-7-01 (LLCs). Please go to: <https://www.sosnc.gov/> to register.

Vendor registered with the North Carolina Secretary of State: Yes ☐ No ☐

5.0 SPECIFICATIONS AND SCOPE OF WORK

5.1 GENERAL

The mission of NCDMS NIFMP is to provide cost-effective, nature-based flood mitigation alternatives to improve flood resiliency for communities within the state. This RFP is soliciting Proposals from qualified Vendors for needed flood mitigation projects as described herein for the NCDMS to successfully meet conditions mandated by the NC General Assembly (G.S. 143-214.11A).

5.2 OBJECTIVES

The Department desires to solicit one or more natural infrastructure Full Delivery flood mitigation projects to improve flood resiliency, including providing measurable flooding relief at a specified location within the Cape Fear, French Broad, Lumber, Neuse, Tar-Pamlico, and/or White Oak River basins. Proposals must identify project site(s), options for property (e.g., easement), conceptual design and monitoring of natural infrastructure flood mitigation project (s). Proposals must estimate the number of acre-feet of flood storage capacity and reduction in peak flows within the specified watershed or sub-watershed.

Proposals may describe the concept of a full buildout flood mitigation project. A phased development description should include affected properties, required infrastructure, anticipated combination of financial resources, referenced municipal planning project sources, Blueprint etc. Vendor offers must distinguish the phase of the flood mitigation project to be considered in response to this RFP. Any awarded contract will begin immediately and not based on a timeline contingent upon any other phased development activity. No incentive will be awarded to projects based on size, but preferable consideration will be given to those projects with measurable flood relief to be accomplished when constructed. Contract(s) will be awarded to projects with achievable standalone goals regardless of prior or future phases.

Note: DMS is not requesting stream, wetland, riparian buffer, or nutrient offset compensatory mitigation projects in this RFP.

5.3 TASKS/DELIVERABLES

For this section, provide detailed descriptions of all design, monitoring plan and reporting deliverables. Task 4 should include, but not limited to, project description and objective, a monitoring plan to demonstrate progress and how the objectives will be measured and reporting to demonstrate if and how objectives were met. If objective, or any part of an objective, is unsuccessful, reporting should include explanations and recommendations for success in the future.

Task 1 Environmental and Project Screening

1. Conduct an on-site meeting with DMS to discuss proposed flood mitigation plan and obtain concurrence on planned work. Provide written documentation of site visit and distribute site visit through notes (e-mail or letter).
2. If applicable, follow procedure from most recent DMS and Federal Highways Administration (FHWA) 'Environmental Screening and Documentation Guidelines for DMS Projects' for compliance with environmental laws and regulations. This screening tool and associated documentation must be reviewed and approved by DMS to meet categorical exclusion requirements and demonstrate project will not have a significant environmental impact.
3. If applicable, provide a signed and dated Landowner Authorization form prior to post-contract site visit.
4. If applicable, satisfy the public notification process in accordance with USACE or DEQ requirements.

Task 2 Quantify Effectiveness of Flood Mitigation

Provide modeling or other quantitative information to show estimated effectiveness of flood mitigation project including scenario analysis of effectiveness under potential build out of watershed conditions. The format of this deliverable should be in document form with text and quantitative explanations of proposed flood mitigation project(s). Models must be approved by DMS before moving forward with Tasks 3, 4, 5, and 6.

Task 3 Property and Easement Acquisition

Vendor shall provide the legal mechanism necessary to secure the land rights for the development, implementation, monitoring, repair, and stewardship of project(s). Types of mechanisms and timelines may vary based on the type of project.

Private property acquisitions shall include, but not limited to, recorded time limited and permanent conservation easement(s). Time-limited easements are appropriate for storm water control measures (SCMs). If applicable, permanent easements are appropriate for stream, wetland and buffer restoration. Maintenance agreements for the functional life of the project (e.g., stormwater wetland 25 years) are required for SCMs and detention projects (e.g. dams).

For public entities, examples include permanent or time-limited easement and a supportive letter from Executive Level leadership committing to a Memorandum of Understanding (MOU) with the State of North Carolina. The MOU may include, but not limit to, basic identification and legal description, scope of use and granted rights, term, duration and transferability, annual inspection, and operation and maintenance (O&M) agreement.

If applicable, the vendor shall provide the conservation easement tasks as follows:

Task 3.1 Preliminary Process and Review

The vendor shall provide the following task deliverables (in digital formats) associated with conservation easement(s) if applicable.

The vendor shall electronically send the following six (6) items to the DMS Project Manager and State Property Office (SPO) Manager Real Property Agent – Division of Mitigation Services, and DMS Property Specialist for review:

1. Draft Conservation Easement (include in the draft deliverable for review, a redline markup of any changes and additions to the original template)
2. Preliminary Survey Plat
3. Digital Easement Files
4. Copy of the attorney's report on title based on 30-year search with deeds and documentation
5. Title attorney's "Schedule A" with title insurance commitment
6. Completed Landowner Contacts Template

Task 3.2 Approval for Closing

1. SPO and DMS will review, and issue written approval to record to the vendor after the preliminary submittal meets requirements.
2. The vendor shall record the final approved easement and plat and obtain all necessary approvals from the County Review Officer.

Task 3.3 Final Deliverables

The Vendor will complete and provide to DMS the five (5) listed deliverables.

1. Recorded Conservation Easement in Adobe PDF format
2. Recorded Survey Plat in Adobe PDF format
3. Final digital easement files in AutoCAD (.dwg) and Esri shapefile (.shp) format
4. Updated attorney's report on title with title binder or commitment in the name of the State of North Carolina
5. As soon as available, the original title insurance policy, in Adobe PDF format, shall be emailed to the State Property Office (SPO) Real Property Agent – Division of Mitigation Services.

If applicable, the vendor shall provide the MOU tasks as follows:

The vendor will provide draft MOU to DMS. DMS will review with DEQ General Counsel and Procurement. DMS may be involved in MOU negotiations due to the complexities arising among political subdivisions. The vendor will provide a completed MOU signed by the partnering entities for the State to sign. The MOU must be signed by all parties to complete this portion of the Task.

Task 3.4 Payment

The vendor will submit an invoice for Task 3 once all deliverables are completed and finalized, including closure of any and all easements and/or required signings of the necessary MOU.

Task 4. Flood Mitigation Plan, Permits and Financial Assurance

Task 4.1: Develop a Draft flood mitigation plan for the project, including but not limited to, proposed natural infrastructure flood mitigation measure plans, hydrologic and hydraulic modeling for current and future conditions, a quantifiable goal and measurable outcome, performance metrics to measure success of the project, and monitoring metrics for stream, wetland and buffer projects if applicable. Include an operation and maintenance (O&M) plan compliant with applicable local and state rules for the project if applicable. Submit to DMS for review, comment, and approval.

Task 4.2: Secure any necessary permits and/or certifications (i.e., FEMA permits, local floodplain development permit, and Erosion and Sedimentation Control permit, 404/401 etc.). Submit applicable permits, certifications, etc. to DMS prior to implementation of the construction portion of the flood mitigation project. Upon completion of construction, notify DMS in writing of completion date.

Task 4.3: Submit final flood mitigation plan for the proposed project.

Task 4.4: Provide financial assurance as described in section 4.5.

Task 4.5: Provide signed O&M agreement(s), including but not limited to identifying a process to secure an Operation & Maintenance (O&M) steward.

Task 5 Construction

Task 5.1: Upon completion of construction, notify DMS in writing (Professional Engineer sealed, confirmation) of completion date. As applicable, complete planting of the flood mitigation site and installation all applicable monitoring devices/plots required in Task 6.

Task 5.2: Boundary Marking

The Vendor is required to install conservation easement monumentation and boundary marking during Task 5 preparation. No payment for Task 5 (included in Payment table in section 5.4) will be approved prior to installation. (See “Property Protection Mechanism-Guidance” on the DMS vendor templates and guidance website at <https://www.deq.nc.gov/about/divisions/mitigation-services/vendors/templates-guidelines-tools-projects>).

Task 6: As-built Survey, Baseline Monitoring Report and O&M Plan

Develop an O&M plan, if applicable, for constructed natural infrastructure flood mitigation measures and perform baseline monitoring for the project.

Task 6.1: Prepare the baseline monitoring document and as-built drawings. The as-built drawings (final record of project construction) should be submitted with the following criteria.

- a. As-built survey
- b. Record Drawing (on same sheets as Pre-Construction Plan design)
- c. Annotation and corrections of the Pre-Construction Plan design
- d. Must bear Professional Land Surveyor (PLS) seal and/or Professional Engineer (PE) seal, where applicable

Task 6.2: Finalize operations and maintenance plans and obtain approval from DMS and any other agencies (federal, state, or local) that required O&M plan approval.

Tasks 7-9 Monitoring, Performance and Repair

Monitor and repair the flood mitigation site as stipulated in the flood mitigation plan to assess the performance of the project site for a period of at least three (3) years. A detailed monitoring and/or performance plan is required and must be approved by DMS. Performance related to flood mitigation estimates will be used only to understand and record the effectiveness of the practice. Vendors should consider capturing the variability of storms in performance and monitoring plans. Performance and/or monitoring reports must be submitted annually to DMS for approval and must include a report that provides an assessment of the performance data collected from the entire monitoring period.

The success of the components of the flood mitigation will be evaluated in each monitoring report and will include stream stability assessments and/or wetland delineations if applicable.

5.4 PAYMENT SCHEDULE AND DESCRIPTION OF MILESTONES

Project Milestones and Payment Schedule		
Task	Project Milestone	Payment[^] (% of Contract Value)
1	Environmental and Project Screening	5
2	Quantify Effectiveness of Flood Mitigation	10
3	Property and Easement Acquisition	20
4	Flood Mitigation Plan, Permits and financial assurance	10
5	Construction	25
6	As-built Survey, Baseline Monitoring Report and Operation and Maintenance Plan	10
7	Submit Monitoring and Performance Report#1 to DMS*)	5
8	Submit Monitoring and Performance Report#2 to DMS*)	5
9	Submit Final Monitoring and Performance Report#3 to DMS*)	10
	TOTAL	100

[^]Vendor is only eligible for payment after DMS has approved the task/deliverable.

* Include O&M plan compliance including necessary completed repairs and any contingencies.

5.5 PROJECT ORGANIZATION

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

5.6 TECHNICAL APPROACH

Vendor's proposal must include, in narrative, outline, and/or graph form the Vendor's approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. A description of each task and deliverable and the schedule for accomplishing each shall be included.

This section must include and be completed in the following sequence:

- a. **Project Goals and Objectives**- Specifically describe how the proposed project will address flooding and improve flood resiliency at specific location(s). The proposal should identify plans applicable to the project area and should document the objectives that will be used to accomplish project outcomes. The anticipated acre-feet of storage created by the project must be stated. Unless otherwise specified in the RFP, the proposed benefits may be determined at the discretion of the Vendor. If a proposed site addresses additional ecosystem services or community benefits, and the vendor lists and enumerate those benefits, they will be considered in the site rating.
- b. **Project Description** - Provide a detailed description of the proposed project including but not limited to a description of the flooding issue (e.g., critical infrastructure flooding) and the current flooding impact; proposed infrastructure that will address the issue and how it will address the issue. If applicable, note all state and federal permitting requirements and approvals needed to execute the project. Describe current site restrictions and how restrictions will be addressed. Due to concerns regarding waterfowl attraction in the vicinity of air transport facilities, the project description must include a site location map that identifies any air transport facility located within 5 miles of the project site. The presence of an air transport facility will not exclude the proposal from consideration. However, the project will have to comply with FAA rules and regulations.

The proposal shall include a map(s) with legible background (e.g., topography, photo) that includes flood project location and area, flood mitigation footprint and proposed easement.

- c. **Current Ownership and Protection** - Identify the ownership of all parcels which will be affected by the project. Include the landowners name and parcel number and the proposed method for providing protection of the site. The protection may be provided through real estate instruments such as conservation easements held by entities such as federal, tribal, state, or local resource agencies, non-profit conservation organizations, or private land managers; the transfer of title to such entities; or by restrictive covenants. Project easements may be time-limited but are expected to cover the normal life cycle of the constructed project (e.g., detention wetlands may have a 25-year life cycle). Vendors are encouraged to work with local governments and NGOs that are willing to take over the long-term ownership and maintenance of the projects.
 - i. In this section of the technical proposal, clearly state the method of the property interest conveyance to the State. For privately-owned parcels, a signed, witnessed option agreement valid for a period of at least one year from the closing date of this RFP, and recorded in the applicable County(ies) or other suitable documentation of real property interest must be provided for each parcel. Any extension, amendment, execution or change of the existing agreement(s) must also be recorded.
 - ii. For public-owned lands, a letter from the authorized representative of the public entity committing to the project.
 - iii. MOUs must be approved and signed by authorized parties for the state and partner.
- d. **Project Phasing** – Provide a complete schedule for completing the tasks for the project as identified in this RFP. Describe methods for completing these tasks. The proposed schedule must be based on completion of the project. Proposed schedules shall include at least three (3) years of monitoring. The proposed schedule should be based on the number of months (from contract issuance) needed to complete each of the tasks listed in the scope of work.
- e. **Performance monitoring and measurement** – The vendor should recognize that these projects are not compensatory mitigation projects and vendors can propose any performance monitoring and measurement that will convey that the project is meeting its intended goals. However, any local or state rules regarding O&M plans must be included. Identify specific methods for measuring performance to determine the effectiveness of the project with respect to flooding. If project(s) include stream, wetland or buffer restoration, identify metrics for monitoring the success of each stream, wetland or buffer

components of the project. If the project has unique characteristics, then the vendor should propose a monitoring program that measures the performance of those unique characteristics. For example, if the project weir structure is controlled remotely, the vendor should propose a method that measures the success and failures of the ability to operate the weir remotely.

- f. **Quality Control** – This section shall describe the Vendor’s quality control program and other procedures that will be used to ensure: 1) each deliverable is submitted in accordance with the schedule established in the technical proposal, it follows the format(s) established by NCDMS, it contains all required information, and is grammatically/typographically correct; and 2) sufficient oversight is provided during the construction/planting phase so that the project is completed on schedule and is in compliance with any required federal, state or local permit(s).

6.0 CONTRACT ADMINISTRATION

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

6.1 CONTRACT MANAGER AND CUSTOMER SERVICE

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

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

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

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

6.2 INVOICES

Vendor must invoice the Purchasing Agency as follows:

- Invoices are to be submitted to the NCDMS after its approval of each individual task/deliverable.
- The Vendor must follow the NCDMS Invoice Guidelines dated March 1, 2014, provided at the following link:
<https://www.deq.nc.gov/about/divisions/mitigation-services/vendors/templates-guidelines-tools-projects>
- Final invoice must be received by the DEPARTMENT within 45 days after the end of the contract period.

- d. Invoices must bear the correct contract number to ensure prompt payment. The Vendor's failure to include the correct contract number may cause delay in payment.
- e. Invoices are to be submitted electronically to **DMS@deq.nc.gov** with the following address:

NC Department of Environmental Quality
Division of Mitigation Services
Attn: Debby Davis
1652 Mail Service Center
Raleigh, NC 27699-1652

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

6.3 POST AWARD BUSINESS REVIEW MEETINGS

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

6.4 CONTINUOUS IMPROVEMENT

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

6.5 PERIODIC STATUS REPORTS

The Vendor shall be required to provide brief reports to the designated Contract Manager as needed. This report shall include, at a minimum, information concerning the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, and notification of any significant deviation from previously agreed upon work plans and schedules. These reports shall be well organized and easy to read. The Vendor shall submit these reports electronically using the format required by the Procurement Entity. The Vendor shall submit the reports in a timely manner and on a regular schedule as agreed by the parties.

6.6 ACCEPTANCE OF WORK

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

Acceptance of Vendor's work product shall be based on the following criteria: DMS' review and approval of tasks and deliverables/milestones described in Sections 5.3 and 5.4 above.

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

6.7 FAITHFUL PERFORMANCE

Any Contract may include terms ensuring a Vendor's performance such as: (1) a bond, or similar assurance; (2) liquidated damages; (3) a percentage of the Contract value held as a retainage; (4) withholding final payment contingent on acceptance of the final deliverable; and (5) any other provision that assures performance of the Vendor. The parties agree that the Vendor shall be subject to the following faithful performance requirements: Vendor's bond or similar assurance described in Section 4.3; and Payment Schedule and Description of Milestone described in Section 5.4.

6.8 TRANSITION ASSISTANCE

If a Contract results from this solicitation, and the Contract is not renewed at the end of the last active term, or is canceled prior to its expiration, for any reason, Vendor shall provide transition assistance to the State, at the option of the State, for up to six months to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. If the State exercises this option, the Parties agree that such transition assistance shall be governed by the terms and conditions of the Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall agree to pay Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for performance of the Services or other resources utilized.

6.9 DISPUTE RESOLUTION

During the performance of the Contract, the parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State's Contract Manager for resolution. Any claims by the State shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall agree to negotiate in good faith and use all reasonable efforts to resolve such dispute(s).

During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.10 CONTRACT CHANGES

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

6.11 ATTACHMENTS

All attachments to this RFP are the copies found within the Ariba Sourcing Tool, and are incorporated herein, and shall be submitted by responding in the Sourcing Tool.

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NORTH CAROLINA INSTRUCTIONS TO VENDORS

I. READ, REVIEW AND COMPLY

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

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

II. REQUEST FOR OFFERS

Vendors are cautioned that this is a request for Offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all bids at any time if such rejection is deemed to be in the best interest of the State.

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

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

III. DUTY TO INQUIRE

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

IV. DEFINITIONS, ACRONYMS AND ABBREVIATIONS

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

1. **AGENCY SPECIFIC TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities for a single entity.
2. **ADDENDUM:** a document issued to supplement or modify the original Solicitation document. Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope changes to the Solicitation.
3. **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency.
4. **BUYER:** The employee of the State or Other Eligible Entity that places an order with the Vendor.
5. **COMMUNITY COLLEGE:** Any of the fifty-eight (58) public North Carolina Community Colleges.
6. **CONTRACT:** A contract resulting from or arising out of Vendor responses to this Solicitation.
7. **CONTRACT ADMINISTRATOR:** A representative of the Agency who is responsible for the functions that are performed after all parties have signed a contract, including any modifications to the contract.
8. **CONTRACT MANAGER:** A representative of the agency or awarded vendor who ensures compliance with the

contract terms and conditions while giving attention to the achievement of the stated output and outcome of the contract.

9. **Electronic Vendor Portal (eVP):** System for vendors to do business with the State of North Carolina, including registering to do business, responding to bid opportunities, and certifying as a HUB and/or NCSBE
10. **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.
11. **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns the commodity in transit and files any claims. Vendor pays all freight and any related transportation charges. A Solicitation may request that a Vendor separately identify freight charges in its bid, but no amount or charge not included as part of the total bid price will be paid.
12. **HUB:** Historically Underutilized Business <https://ncadmin.nc.gov/businesses/hub>
13. **IFB:** Invitation for Bids (a type of Solicitation document)
14. **LOT:** A grouping of similar products within this Solicitation document.
15. **OFFER:** the bid or proposal submitted in response this Solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
16. **OFFEROR:** the single legal entity submitting the Offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.
17. **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
18. **PROCUREMENT LEAD:** Representative of the agency identified on the first page of the Solicitation document who will correspond with potential Vendors concerning Solicitation issues, will contract with the Vendor providing the best offer to the State, and is the individual who will administer the Contract for the State.
19. **QUALIFIED BID/PROPOSAL:** A responsive bid submitted by a responsible Vendor.
20. **RESPONSIBLE:** Refers to a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
21. **RESPONSIVE:** Refers to an Offer that conforms to the Requirements of the Solicitation in all respects to be considered by the State for award.
22. **RFI:** Request for Information (an information gathering tool that does not result in a contract)
23. **RFP:** Request for Proposals (a type of Solicitation document)
24. **RFPO:** Request for Pre-Qualifications (a type of Solicitation document)
25. **RFQ:** Request for Quotes (a type of Solicitation document)
26. **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
27. **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, institutions, boards, commissions, universities, and units of the State.
28. **STATE DEPARTMENTS:** Department of Administration, Department of Adult Correction, Department of Agriculture and Consumer Services, Department of Commerce, Department of Natural and Cultural Resources, Department of Environmental Quality, Department of Health and Human Services, Department of Information Technology, Department of Insurance, Department of Justice, Department of Labor, Department of Military and Veteran Affairs, Department of Public Instruction, Department of Public Safety, Department of Revenue, Department of State Treasurer, Office of the Secretary of the State, Department of Transportation, Wildlife Resources Commission, Office of Budget and Management, Office of the Governor, Office of the Lieutenant Governor, Office of The State Auditor, Office of the State Controller.
29. **VENDOR:** The supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Solicitation document. Following award of a contract, the term refers to an entity receiving such an award.
30. **WORK:** All labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.
31. **YOU and YOUR:** Offeror.

V. INTERPRETATION OF TERMS AND PHRASES

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

VI. BID SUBMISSION

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

urged to take the possibility of delay into account when submitting a proposal by U.S. Postal Service, courier, or other delivery service.

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

allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.

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

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

void *ab initio*.

23. **VALID TAXPAYER INFORMATION:** All persons or entities desiring to do business with the State must provide correct taxpayer information on North Carolina specified forms. The Substitute W-9 and Instructions are here:
<https://www.osc.nc.gov/state-north-carolina-sub-w-9/open>
24. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities available as well as notifications of status changes to those Solicitations. Online registration and other purchasing information is available at the following website:
<https://evp.nc.gov>.
25. The status of a Vendor's E-Procurement Services account(s) shall be considered a relevant factor in determining whether to approve the award of a Contract resulting from this Solicitation document. Any Vendor with an E-Procurement Services account that is in arrears by 91 days or more at the time of bid opening may be suspended or deactivated, at the State's discretion, and may be disqualified from further evaluation or consideration.
26. **TABULATIONS:** Bid tabulations can be electronically retrieved at the Electronic Vendor Portal (eVP), <https://evp.nc.gov>. Tabulations will normally be available at this web site not later than one working day after the bid opening. If negotiation is anticipated under 01 NCAC 05B.0503, pricing may not be public until award. Lengthy or complex tabulations may be summarized, with other details not made available on eVP. Requests for additional details or information concerning such tabulations cannot be honored.
27. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in bids that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
28. **COMMUNICATIONS BY VENDORS:** In submitting its bid, the Vendor agrees not to discuss or otherwise reveal the contents of its bid to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this Solicitation. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the Solicitation, during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the Solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's bid and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this Solicitation. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the using agency or issuing agency authorized by this Solicitation are permitted.
29. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in writing in this Solicitation document and in formal Addenda.
30. **PROTEST PROCEDURES:** When a Vendor wishes to protest a contract awarded by the Division of Purchase and Contract or awarded by an agency when the award amount exceeds the agency's general delegation and the contract is not subject to a special delegation or exemption, a Vendor shall submit a written request addressed to the State Purchasing Officer at: Division of Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305.

When a Vendor wishes to protest a contract awarded by an agency when the award amount is less than an

agency's general delegation or when the contract is subject to a special delegation or exemption the Vendor shall submit a written request to protest to the purchasing officer of the agency that issued the award.

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

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

31. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this Solicitation or those in any resulting Contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this Solicitation document, including any negotiated terms, (2) requirements and specifications and administration, (3) North Carolina General Terms and Conditions in North Carolina General Terms And Conditions, (4) Instructions To Vendors, (5) Pricing, and (6) Vendor's Bid.
32. **ADDENDA:** Critical updated information may be included in Addenda to the Solicitation. It is important that all Vendors bidding on the Solicitation periodically check for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in the Solicitation document and all Addenda thereto. Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued concerning the Solicitation.
33. **ORAL EXPLANATIONS NON-BINDING:** Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a Solicitation will be furnished promptly to all other prospective Offerors as an Addendum to the Solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. See clause herein entitled "Duty to Inquire." The State will not identify You in its answer to Your question.
34. **MAXIMUM COMPETITION:** The State seeks to permit the maximum practicable competition. Offerors are urged to advise the State, as soon as possible, regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. If the State determines that any changes will be made resulting from the questions asked, then such decisions will be communicated in the form of an Addendum.
35. **FIRM OFFER:** Vendor's bid shall constitute a firm offer. By execution and delivery of a bid in response to a Solicitation, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposefully or inadvertently, shall have no force or effect, and will be disregarded. Any bid that contains language that indicates the bid is non-binding or subject to further negotiation before a contractual document may be signed shall be rejected.



NORTH CAROLINA GENERAL TERMS & CONDITIONS

1. PERFORMANCE:

- a) It is anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include Services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables not subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of the State. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in this Contract. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State shall notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor agrees to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by the State.
- c) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.
- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to the State related to all Services performed or other deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed at a minimum in accordance with generally accepted and applicable industry standards.
- e) The State may document and take into account in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

2. DEFAULT AND TERMINATION:

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. *See, G.S. 25-2-712.* In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State shall have the right to terminate the Contract by giving thirty days written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that are

prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license

to the extent necessary for the State to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.

- c) If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract for convenience at any time by providing 60 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this Contract shall, at the option of the State, become its property, and under any applicable Vendor license to the extent necessary for the State to use such property. If the Contract is terminated by the State for convenience, the State shall pay for those items or Services for which such option is exercised, less any payment or compensation previously made.

3. INTERPRETATION, CONFLICT OF TERMS:

- a) The definitions in the Instructions to Vendors in the relevant solicitation for this Contract, and in 01 NCAC 05A.0112 are specifically incorporated herein.
- b) If federal funds are involved in the transactions under this Contract, the Vendor shall comply with all applicable state and federal requirements and laws, except where State requirements are more restrictive. See the additional federal requirements included in the "Federal Funds Provisions" section below.
- c) "Purchasing Agency" herein is as defined in 01 NCAC 05A.0112, except that if this Contract has been entered into by the NC Department of Administration, Division of Purchase and Contract (P&C) as indicated in the Contract (e.g., a State Term Contract), then P&C will then be a Purchasing Agency for the purposes herein and in the Federal Funds Provisions, below.
- d) Contracts made in contravention of General Statutes, Chapter 143, Article 3 and the Rules in 05 NCAC Chapter 5, are void. G.S. 143-58.
- e) In cases of conflict between specific provisions in this Contract and any other referenced documents, the Order of Precedence shall be (high to low) (1) any special terms and conditions specific to this Contract, including any negotiated terms; (2) requirements, specifications and administrative terms; (3) these NORTH CAROLINA GENERAL TERMS AND CONDITIONS, including the Federal Funds Provisions; (4) Definitions and other provisions in INSTRUCTIONS TO VENDORS in this solicitation, which is specifically incorporated in this Contract; (5) PRICING, and (6) Vendor's Bid, to the extent specifically and mutually incorporated into this Contract.
- f) In the event of conflict of terms between applicable provisions of the Federal Funds Provisions and the other provisions of these North Carolina General Contract Terms and Conditions, the more restrictive provision will govern.

- 4. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

5. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.
6. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b) The agency(ies) participating in the Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
 - c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

7. **SITUS AND GOVERNING LAWS:**

- a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. G.S. 22B-3.
- b) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.
- c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

8. **NON-DISCRIMINATION COMPLIANCE:**

Wholly State Funded Contracts.

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

Contracts Partially or Wholly Federally Funded.

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

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

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- d) The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:
- e) The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's legal duty to furnish information.
- f) The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- g) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts.
- h) The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.
- i) The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
- j) The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering

agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

k) proceedings.

9. **PAYMENT TERMS:** Payment terms are net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Procuring Agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor.

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

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

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

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

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

b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.

c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:

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

2. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

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

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

13. ACCESS TO PERSONS AND RECORDS:

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

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

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

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

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

contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.

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

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

(e) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.

(f) Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.

(g) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.

(h) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

14. ASSIGNMENT OR DELEGATION OF DUTIES:

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

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

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

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

- a) **REQUIREMENTS-** Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.
- b) **COVERAGE-** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:
1. **For Small Purchases** as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
 2. **For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:**
 - i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
 - ii. **Commercial General Liability**- General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
 - iii. **Automobile**- Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.
 3. **For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:**
 - i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
 - ii. **Commercial General Liability**- General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
 - iii. **Automobile**- Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The

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

16. GENERAL INDEMNITY:

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

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

GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:

- a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this Contract.
- b) The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.
- c) Vendor shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. Vendor shall be responsible for all activity and all charges by its agents or employees. Vendor agrees not to permit a third party to use its E-Procurement Services account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

E-PROCUREMENT FEES – APPLICABLE ONLY TO GOODS PURCHASES

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

SERVICE). G.S. 66-58.12; See, *NC E-Procurement Terms of Use*. This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Contract.

- e) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the E-Procurement Supplier Manager (Supplier Manager), based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless the Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee, or it shall be considered a material breach of Contract.

Pursuant to G.S. 147-86.23, the service will charge 1) interest on past due balances at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due, and, 2) late payment penalties, currently ten percent (10%) of the account receivable. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

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

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

The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B1379. For further information, see, G.S. 75-60 *et seq.* **Notice** is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. See, e.g., G.S. 143B-1376.

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

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

- 22. ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
- 23. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."
- 24. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.
- 25. NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor-supplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
- 26. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including, without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, other catastrophic epidemic or pandemic, natural event or Act of God.
- 27. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.
- 28. FEDERAL FUNDS PROVISIONS:**

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

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

- a) **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State's award of any work under this Contract.

- b) **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- c) **Remedies and Termination.** For purposes of this section the State Remedies and Termination provisions above apply as written.
- d) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Compliance with the Contract Work Hours and Safety Standards Act.

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

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

Clean Air Act

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

Federal Water Pollution Control Act

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

f) Debarment and Suspension.

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

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

To the extent applicable, Vendors that apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonFederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

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

h) Procurement of Recovered Materials.

1. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
 - Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - Meeting Contract performance requirements; or

- At a reasonable price.
 - 2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
 - 3. The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."
- i) **Access to Records.** In addition to the North Carolina General Contract Terms & Conditions section entitled "**ACCESS TO PERSONS AND RECORDS**" included in this Contract, the following access to records requirements apply to this Contract:
1. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 2. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 3. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
 4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.
- j) **Modifications to Contract.** Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled "**AMENDMENTS**," except as approval and signature by any federal official may also be required.
- k) **Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.
- l) **Energy Efficiency.** All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
- m) **Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.
- n) **No Obligation by Federal Government.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.
- o) **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.
- p) **Federal Seals, Logos, and Flags.** In addition to the prohibitions of the North Carolina General Contract Terms & Conditions section above entitled "**ADVERTISING**," the Vendor shall not use the seal(s), logos, crests, or

reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.

- q) **System for Awards Management.** Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.