

STATE OF NORTH CAROLINA Central Piedmont Community College Procurement Office	INVITATION FOR BIDS/ NO. 88-16249136-J	
	Bids will be publicly opened: 11/30/2012	
	Contract Type: Open Market/Brand Specific	
Refer <u>ALL Inquiries</u> to: Jennifer Ennis E-Mail: Jennifer.ennis@cpcc.edu	Issue Date: 11/20/2012 Commodity Number: 915-67 Commodity: Avaya CS1000 PBX Maintenance Services	
Telephone Number: (704)330-4407	Using Agency Name: Central Piedmont Community College (CPCC)	
(See page 2 for mailing instructions.)	Agency Requisition No. 16249136	

OFFER AND ACCEPTANCE

This solicitation advertises the State's needs for the software services and/or goods described herein. The State seeks proposals comprising competitive bids offering to sell the software services and/or goods described in this solicitation. The State's acceptance of any proposal must be demonstrated by execution of the acceptance found below and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence among terms as follows:

Special terms and conditions specific to this Invitation for Bids, Specifications of the solicitation documents, except as amended the State's Terms and Conditions, and the awarded Vendor's proposal. **Provided, however, that no contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.**

EXECUTION

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

Failure to execute/sign bid prior to submittal shall render bid invalid. Late bids are not acceptable.

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

Offer valid for forty-five (45) days from date of bid opening unless otherwise stated here: ____ days

ACCEPTANCE OF BID

If any or all parts of this bid are accepted, an authorized representative of Central Piedmont Community College shall affix their signature hereto and this document and the provisions of the special terms and conditions specific to this Invitation for Bids, the specifications, and the ITS Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful vendor(s).

FOR Central Piedmont Community College **USE ONLY**

Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification,

by _____ (Authorized representative of Central Piedmont Community College).

DELIVERY INSTRUCTIONS: Sealed bids, subject to the conditions made a part hereof, will be received at the address below, for furnishing and delivering the commodity as described herein. Bids submitted via facsimile (FAX) machine, telephone or electronically in response to this Invitation for Bids will not be accepted. **Bids are subject to rejection unless submitted on this form.**

Deliver one **(1) signed original** executed bid response and one **(1) copy** of the executed bid response. Address envelope and insert bid number as shown below. It is the responsibility of the Vendor to have the bid in this office by the specified time and date of opening. Vendor must also submit one (1) signed, executed electronic copy of its proposal on read-only CD/DVD(s) or USB Drive. The files on the discs should not be password-protected and should be capable of being copied to other media.

Address envelope and insert bid number as shown below. Please note that the US Postal Service does not deliver any mail (US Postal Express, Certified, Priority, Overnight, etc.) on a set delivery schedule to this Office. **It is the responsibility of the Vendor to have the bid in this Office by the specified time and date of opening.**

DELIVER TO:
BID NUMBER: 88-16249136-J
Central Piedmont Community College
Attn: Jennifer Ennis, Senior Buyer
<u>Delivery by US Postal Service:</u> PO Box 35009 Charlotte, NC 28235
<u>Delivery by other means:</u> 315 West Hebron St Charlotte, NC 28273

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

ADDENDUM TO IFB: If a pre-bid conference is held or written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), <http://www.ips.state.nc.us/ips/deptbids.asp>, and shall become an Addendum to this IFB. Vendors' questions posed orally at any pre-bid conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer.

Critical updated information may be included in these Addenda. It is important that all Vendors bidding on this proposal periodically check the State website for any and all Addenda that may be issued prior to the bid opening date.

BASIS FOR REJECTION: Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the 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 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.

NOTICE TO VENDORS: The State objects to and will not be required to evaluate or consider any additional terms and conditions submitted with a Bidder's response. This applies to any language appearing in or attached to the document as part of the Bidder's response. By execution and delivery of this Invitation for Bids and response(s), the Bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

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

AWARD NOTIFICATION: A link to the Interactive Purchasing System (IPS) allows the public to retrieve bid award information electronically from the Internet web site: <http://www.ips.state.nc.us> Results may be found by searching by bid number or agency name. This information may not be available for several weeks dependant upon the complexity of the acquisition and the length of time to complete the evaluation process.

VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System at the following web site: <http://www.ips.state.nc.us>

SECTION 1: IFB SCHEDULE

Bid Questions

Due Date: 11/27/2012

Time: 2:00 p.m. Eastern Standard Time

Address: N/A

Instructions: Written questions will be received at **Jennifer.ennis@cpcc.edu** until date and time specified above. Please enter "Questions **88-16249136-J**" as the subject for the email. The questions are to be submitted in the following format:

Citation	Vendor Question	CPCC's Response
Bid Section, Page Number		

The State will prepare responses to all written questions submitted, and post an addendum to the Interactive Purchasing System (IPS) <http://www.ips.state.nc.us/ips/pubmain.asp>. Oral answers are not binding on the State.

Vendor contact regarding this IFB with anyone other than Jennifer Ennis may be grounds for rejection of said Vendor's offer. Agency contact regarding this IFB with any Vendor may be grounds for cancellation of this IFB.

Bid Submittal

Due Date: 11/30/2012

Time: 2:00 p.m. Eastern Standard Time

Mail Address: See page 2

Instructions: All bids must be sealed and are subject to the conditions of this IFB. Indicate Firm name and IFB number on the front of the sealed envelope or package.

Include **one (1) original** executed bid and **one (1) copy** of the executed bid response. Vendor must also submit one (1) **electronic copy** of its proposal in read-only PDF document on CD/DVD(s). The files on the discs should not be password-protected and should be capable of being copied to other media.

Each original bid must be signed and dated in ink, by an official authorized to bind the company. The Vendor, by making an offer, expressly represents that the specifications herein have been read and understood, and that the offer complies with all aspects. Any change that is received after the bid opening, and that is not specifically solicited by the State, shall be rejected.

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

INTENT: The purpose of this Invitation for Bids (IFB) is to obtain pricing for and select a Vendor to provide maintenance and support services for CPCC for Avaya Meridian CS1000 PBX telecommunications systems. The contract period of performance will be for one year from effective date with an option to renew for two (2) additional years in one (1) year increments. Bidding will be in accordance with the terms and conditions of this IFB and any agreed addenda thereto.

VENDOR OFFER

Bid must be submitted on the forms provided herein. Bids submitted in any other format may be subject to rejection. If additional sheets are required (for example, Vendors who are offering alternate proposals); the Vendor should submit a separate bid document. Any **alternate proposals** must be clearly marked as such with the phrase "alternate bid for 'name of' Vendor" and numbered sequentially with the first bid. This legend must be in bold type of not less than 14 point type on the face of the bid, and on the text of the alternative proposal.

Reseller Information - The Agency acknowledges that the Reseller has merely purchased the Third Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than the Reseller ("Third Parties"). The Agency further acknowledges that except for the payment to the Reseller for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third Party Items which are provided to the Reseller. The Reseller shall assign all applicable third party warranties for Deliverables to the Agency.

Pursuant to General Statute 143-48, 143-128.4 and Executive Order #13, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this Invitation for Bids.

Historically Underutilized Businesses

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

Are you a Historically Underutilized Business (i.e., minority, woman or disabled-owned business)?

____ Yes ____ No

If applicable, specify classification. _____

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

VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.: In accordance with NC General Statute 147-33.97, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers located. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor’s proposal. The Vendor shall provide the following for any proposal or actual utilization or contract performance:

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

Will any work under this contract be performed outside the United States? Where will services be performed: _____	YES _____	NO _____
---	-----------	----------

BID AWARD: It is the general intent to award this contract to one Vendor. As provided by statute, award will be based on Best Value Analysis, (Lowest Price Technically Acceptable Source Selection Method in accordance with 09 NCAC 06B. 0302 Information Technology Procurement.)

The State, at its sole discretion, reserves the right to reject any offers that does not meet specifications. Vendor bid responses will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:

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

PROTEST PROCEDURES: When an offeror wants to protest a contract awarded pursuant to this solicitation, that is over \$25,000, they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm

responding to this solicitation. Bid status and Award notices are posted on the Internet at <http://www.ips.state.nc.us>. All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1102 - .1121.

E-PROCUREMENT: This is an e-procurement solicitation. See Paragraphs #32 of the attached Terms and Conditions. The Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina's statewide e-procurement initiative. It is the vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature vendor acknowledges acceptance of all terms and conditions including those related to e-procurement.

- e. General information on the e-procurement service can be found at <http://eprocurement.nc.gov/>
- f. Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service at the following web site: <http://eprocurement.nc.gov/Vendor.html>
- g. As of the IFB submittal date, the Vendor must be current on all e-Procurement fees. If the Vendor is not current on all e-Procurement fees, the State may disqualify the Vendor from participation in this IFB.

DELIVERY OF SERVICE

The successful Vendor will start delivery of service within thirty (30) consecutive calendar days after receipt of purchase order to Charlotte, NC. State your guaranteed delivery date:

Delivery will be made from _____ (city, state) within _____ consecutive calendar days after receipt of purchase order.

WARRANTY, SOFTWARE and MAINTENANCE

Warranty: The Vendor warrants that all maintenance components and products for the duration of a contract awarded in response to this IFB whether newly manufactured or refurbished, will be of good material and workmanship, free of defects, and warranted as if covered by manufacturer's standard hardware and software warranty for the product type. Warranty shall include replacement of defective products at no additional charge to the State for the term of the warranty.

Software License: Central Piedmont Community College has Partner Assurance Support Services (PASS) in place through June 30, 2011. It will be the winning bidder's responsibility to download and install all fixes, patches and upgrades for the duration of this contract in coordination with CPCC Information Technology Services staff.

Maintenance: Products to be covered under this maintenance contract have been recently upgraded to current hardware and software versions. **If inspection of products is required by the manufacturer for qualification of products for maintenance services, the Vendor shall be responsible for all costs associated therewith.** Furthermore, if after inspection Avaya determines that products do not qualify for Avaya's Service Programs, the Vendor shall be responsible for all costs associated with qualification of the product.

The report of a problem does not presuppose that every call must result in an "on-site" visit for service/repair. The Vendor and/or service sub-contractor shall utilize best efforts to resolve problems in a timely fashion through the use of acceptable servicing methods to include, but not be limited to, verbal problem analysis, and remote diagnosis. The warranty requirement does not impose any additional duty on the State to make other than normal and good faith problem resolution efforts or expenditures of time.

- A. Offeror is manufacturer authorized to repair equipment during the warranty period? ___Yes ___ No
- B. Offeror will perform Warranty Service? ___Yes ___ No
- C. Offeror has a service office within a 50 mile radius of the College Central campus located
 at 1201 Elizabeth Ave, Charlotte, North Carolina 28204? ___Yes ___ No
 (Check Yes or No)

A.	Bidder is manufacturer authorized to repair equipment offered during the warranty period?	Yes		No	
B.	Will bidder perform Warranty Service?	Yes		No	

If Yes to B, complete this section:

Contact Person					
Telephone Number		Toll-free Number			
Address of Service Facility					

If No to B, complete this section: (who will perform the Warranty)

Company Name			Contact Person			
Address		City		State		Zip
Telephone Number			Toll-free Number			

PRODUCT RECALL

Vendor assumes full responsibility for prompt notification of both the contract administrator and purchaser of any product recall in accordance with the applicable state and federal regulations.

BID AWARD

It is the general intent to award this contract to one Vendor. As provided by statute, award will be based on Best Value Analysis, (Lowest Price Technically Acceptable Source Selection Method in accordance with 09 NCAC 06B. 0302 Information Technology Procurement.) See ITS Instructions to Vendors, Item #14.

The State, at its sole discretion, reserves the right to reject any offers that does not meet specifications.

POSSESSION AND REVIEW

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

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

AUTHORIZED PARTNER

The Vendor **must** provide a letter from Avaya that confirms the Vendor is authorized to provide maintenance and replacement equipment, required in this Invitation for Bids (IFB). Contact Patrick Tobin (tobinp@avaya.com) or Sam Rule (srule@avaya.com) to request this letter. The request to provide the letter may take up to 2 days to process and return from the manufacturer. This letter shall be included with the Vendor's response to this IFB. As part of the letter, the Vendor shall confirm the following;

Vendor has local (per Section 6-C above) engineering support and capabilities. Yes No

Bids received without the Avaya Authorized Partner letter shall be rendered non-responsive and shall not be considered further.

BRAND SPECIFIC

Manufacturer's name and product description used in this solicitation are brand and product specific. The products and services offered in response to this solicitation must be of the manufacturer and type specified.

No substitutions will be accepted.

SPECIFICATIONS

The following are the specifications for the maintenance and support services requested in this IFB:

TECHNICAL AND MAINTENANCE REQUIREMENTS

MAINTENANCE REQUIREMENTS

MAINTENANCE

- A. To be considered, Vendor must be an Avaya authorized representative with manufacturer certified technician capable of maintaining the Avaya CS1000 PBX systems, software, application servers and all peripherals listed in Appendix A-1 through A-4. Vendor shall provide sufficient documentation that all service employees are properly trained and have been certified by the equipment manufacturer to provide maintenance on the Avaya CS1000 PBX, software and peripherals.
- B. Vendor shall provide complete maintenance service. Vendor shall furnish all labor, materials, replacement parts and equipment necessary to perform complete maintenance. All work shall be done in a workmanlike manner by workmen skilled in their respective trades. Replacement parts shall be first quality, new or rebuilt OEM parts. There should be no expectation of problem troubleshooting by CPCC staff.
- C. Vendor shall provide complete system maintenance, including but not limited to performing system backups and 7x24x365 remote monitoring. The objective of remote monitoring is to proactively identify problems, communicate these to CPCC staff and to deliver repairs as necessary.
- D. Maintenance shall include coordination with the local telephone companies concerning operation of CO trunks or network access trunks and access devices. This coordination shall include the resolution of problems involving the local telephone company's circuitry and will be a part of the Vendor's maintenance contract responsibilities as CPCC's agent.
- E. The College shall provide appropriate environmental conditions, necessary commercial power facilities for the system, generator backup power, and access to the premises, access to and from the common carrier network, and a secure equipment storage area for the Vendor's work.
- F. Monthly backup must be performed on the first Monday of every month and written documentation provided promptly to the college.
- G. Total maintenance package shall include any shipping and travel/trip costs incurred as the Vendor's responsibility. No additional charges will be accepted for these costs.
- H. Vendor shall provide sufficient advance notification of a planned outage for system maintenance. Such activities shall be planned in coordination with CPCC IT Services team to minimize disruption of College services.

EMERGENCY MAINTENANCE

Emergency maintenance response time shall be within two (2) hours after receipt of an emergency maintenance call from CPCC's designated representative. Emergency maintenance is defined as any of the following:

- A. Complete System failure.
- B. Failure of a common control unit.
- C. Failure of one (1) or more Central Office PRI trunk circuits. (Defined as the inability to either originate or receive calls).
- D. Failure of a power supply.
- E. Failure of 15% or more stations.
- F. Call Pilot system not processing calls.
- G. Contact Center inoperative.
- H. Failure of one or more Application Gateway Servers.
- I. Failure on the Avaya side of the integration components between CPCC's Avaya equipment and its Microsoft Lync Environment.

Response Time Definition:

The time interval between when CPCC notifies the contractor or a problem is detected through remote monitoring and the time the contractor begins troubleshooting the system, on-site or remotely.

ROUTINE MAINTENANCE

Routine maintenance response time shall be within eight (8) working hours after receipt of a routine maintenance call from CPCC's designated representative. Routine maintenance is defined as any occurrence that does not meet the criteria of emergency maintenance or scheduled maintenance. In the event the service call is received less than three (3) hours before closing of normal business hours, service will follow on the next business day.

LABOR RATE FOR OPTIONAL EQUIPMENT CHANGES, AND RELOCATION

Vendor shall supply existing labor rate for equipment additions, changes, and relocations and consulting services. If the charge is based on an hourly rate, quote the rate per hour and/or the minimum charge per incident.

This rate must remain firm for the initial contract period. If the contract is renewed, Vendor may adjust this rate for each subsequent renewal period by no more than 5% of the award rate.

EQUIPMENT ADDITIONS, CHANGES AND RELOCATIONS RESPONSE

Upon receipt of notification by designated CPCC representative, equipment additions, changes and relocations shall be completed within the schedule below:

<u>Number of Stations</u>	<u>Time Interval</u>
1-5	5 business days
6-10	8 business days
11-15	10 business days
16 or more	10 business days, plus 2 days for each additional 5 stations up to a maximum of 20 business days.

COVERAGE

- A. Maintenance shall cover the three (3) PBXs and associated internal or external equipment cabinets, MAT terminal, Call Pilot Server, Contact Center, Application Gateway servers and MOH device. The Avaya components of CPCC's integration with its Microsoft Lync Environment must also be covered. Maintenance shall include regular backups of the system and monitoring of system performance on all the servers. The selected Vendor shall be responsible for keeping the servers and systems current at all times with the latest Operating System Service Packs and software in consultation with CPCC staff. Vendor shall provide the CPCC sufficient notification on any hardware or software end of life announcements.

Full service maintenance will include but not be limited to the following:

- 1- Maintenance and repairs, including the costs of parts and labor for operation of the telephone system,
 - 2- Remote monitoring of PBX alarms and proactive remedial action,
 - 3- Repair/Replace Common and Peripheral Cabinet Cards,
 - 4- Coordination with College Central Office trunk/PRI service provider,
 - 5- All patches, fixes and upgrades associated with the PBX and application server software,
 - 6- Provide to the College any bulletin posts and system or upgrade documents from Avaya,
 - 7- Maintenance and service of the CallPilot voice mail system,
 - 8- Maintenance and service of the Contact Center system,
 - 9- Maintenance and service of the Application Gateway servers and paging system
 - 10- Rapid Response to emergencies, 24 Hours a Day, 7 Days a Week,
 - 11- Emergency on site response in 2 hours,
 - 12- Telephone Support,
 - 13- Manufacturer recommended preventative maintenance on systems,
 - 14- System engineering and consultation,
 - 15- Avaya Support Commitment,
 - 16- Factory Registration and Support of System
 - 17- Monthly system backups
- B. Stations: Stations support includes only assisting with troubleshooting to isolate the problem to analog, digital or IP devices. Replacement of station equipment and other network switches will be made by the College Network Services staff.
- C. Digital and Analog Station Line Cards: Card support includes only assisting with troubleshooting to isolate the problem. Replacement Digital and Analog station line cards will be provided by the College Network Services staff.

- D. Items not covered: Repair and maintenance of printers and station terminals whether analog, digital or IP based shall be excluded from this contract.

MAINTENANCE PRICE ADJUSTMENT

During the life of the contract, the College's requirements are likely to vary. This proposal per unit pricing shall remain firm for the duration of the initial one year contract term and may be adjusted up or down at renewal time depending upon the software and hardware configuration at that time. The vendor will perform annual audits at the end of each year of licenses in use to adjust billable cost based upon the actual number of licensed devices in use.

The college is migrating from legacy to VOIP telephone. Through this migration, over time some of the system components will be decommissioned and taken off maintenance.

Manufacturer's name and product description used in this solicitation are brand and product specific. The products and services offered in response to this solicitation must be of the manufacturer and type specified.

SECTION 13: FURNISH AND DELIVER

The Vendor bid shall be based upon the approximate system count of the CS1000 PBX configurations in Appendix A-1 through A-4. Bid shall remain firm for the duration of the initial contract. Billing and payment for services will be made on a monthly basis.

UOM	DESCRIPTION	UNIT COST	TOTAL EXTENDED COST
Monthly	Year – 1 One of Avaya Meridian CS1000 PBX Maintenance & Support Services for all CPCC Campus locations		
Monthly	Year – 2 Two (Optional Renewal) of Avaya Meridian CS1000 PBX Maintenance & Support Services for all CPCC Campus locations		
Monthly	Year – 3 Three (Optional Renewal) of Avaya Meridian CS1000 PBX Maintenance & Support Services for all CPCC Campus locations		

TOTAL COST \$ _____

LABOR RATE FOR OPTIONAL EQUIPMENT CHANGES, AND RELOCATIONS

CPCC reserves the right to have its own staff perform equipment adds, changes and relocations. Vendors should provide labor rate and minimum charge for these services if requested by CPCC.

Labor Rate/Hour: \$ _____ per Hour **Minimum Charge:** \$ _____ per call.

Energy Star

“ENERGY STAR® is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency.” <http://www.energystar.gov/>

Do the products offered meet Energy Star specifications for energy efficiency?	Yes		1.1 No	
---	------------	--	--------	--

Sustainability

In an effort to support the sustainability efforts of the State of North Carolina Executive Order Number 156, we solicit your cooperation. <http://www.p2pays.org/ref/03/02221.pdf>

Does the packaging of the item(s) offered in response to this solicitation contain recycled content? Yes No

If yes, what is the recycled content? _____% Can this packaging be recycled? Yes No

Do the item(s) offered have any recycled content? Yes No

If yes, what is the recycled content? _____%

How can the items be disposed of or can it be recycled at the end of use?

Appendix A-1, System Size, page 1

CPCC Central Campus CS1000M MG PIV Rls. 5.5

Part Number	9) Part Name	10) Quantity
NT8D29BA	CE Power Supply	1
NT8D29AB	CE Power Supply	3
NT8D21AB	Ring Generator	8
NT8D06AB	CE Power Supply	10
NT8D17FA	CONF/TDS	4
NT5D12AD	Dual/PRI	4
NT8D04BA	NET	4
NT8D04AA	NET	1
NTRB33AF	FIGI	4
NT1P63CA	Fbr/Rcvr	1
QPC43R	PER SIG	4
QPC441F	3PE	4
NT4N65AC	CNI	2
NT4N48BAE5	SYS-UNTI	2
NT4N39AA	CPPIV	2
NTRB53AA	CLKC	2
NT7R51AD	Local Carrier/ IF	2
NT1P63CA	FNET	1
NT8D14BB	Universal Trunk	1
NT8D02GA	DLC	59
NT8D02AB	DLC	3
NT8D02EA	DLC	2

NT8D02EB	DLC	3
NT8D02HA	DLC	1
NT8D09AK	ANLG M/WLC	14
NT8D09AL	ANLG M/WLC	18
NT8D09AB	Anlg M/WLC	2
NT5D65CA	Local Mini Carrier	2
NT5D64CB	Local Mini Carrier	1
NT7R52AE	Remote Carrier I/F	2
NT7R52AD	Remote Carrier I/F	1
NT5D67CB	Remote Mini Car I/F	1
NTDW66AAEF	CPPM (SS)	1
NTDW66AAE5	CPPM (SS)	2
ISP1100 1U	SS	1
IBM X306m	SS	1
IBM X306m	APPGW	2
NT8D01BC	Cont/4	9
NT1R20BA	XOPS	1
NT8D16AB	DTR	2
NTRB18CA	M GATE	2
NTAG36AB	MIRAN	1
NT5D11AE	LINE SIDE T1 INTERFACE	1
NTDW65AAE5	MC32S	3
NT5D51AB	MICB	1

CPCC Central Campus CS1000M MG PIV Rls. 5.5

<u>Software (SLT Report)</u>	<u>Total</u>	<u>Left</u>	<u>Used</u>	<u>Overflow</u>
System type is - Communication Server 1000M MG/CP PIV				
CP PIV - Pentium M 1.1 GHz				
ANALOG TELEPHONES	656	185	471	
CLASS TELEPHONES	0	0	0	
DIGITAL TELEPHONES	1128	412	716	
DECT USERS	0	0	0	
IP USERS	1024	145	879	
BASIC IP USERS	0	0	0	33
TEMPORARY IP USERS	0	0	0	
DECT VISITOR USER	0	0	0	
ACD AGENTS	5200	5148	52	
MOBILE EXTENSIONS	0	0	0	
Telephony Services	100	96	4	
AVAYA SIP LINES	0	0	0	
THIRD PARTY SIP LINES	0	0	0	
PCA	1525	1525	0	
ITG ISDN TRUNKS	0	0	0	
H.323 ACCESS PORTS	0	0	0	
AST	200	200	0	
SIP CONVERGED DESKTOPS	0	0	0	
SIP CTI TR87	200	200	0	
SIP ACCESS PORTS	186	10	176	
RAN CON	16	0	16	
MUS CON	30	21	9	

TNS	32760	30079	2681	
ACDN	24000	23956	44	
AML	16	14	2	
IDLE_SET_DISPLAY				
LTID	32760	32760	0	
RAN RTE	512	510	2	
ATTENDANT CONSOLES	32760	32760	0	
BRI DSL	10000	10000	0	
DATA PORTS	32760	32760	0	
PHANTOM PORTS	32760	32720	40	
TRADITIONAL TRUNKS	32760	32544	216	
DCH	255	250	5	

Appendix A-2, System Size

CPCC Harper Campus CS1000E Rls. 5.5

<u>Part Number</u>	<u>Part Name</u>	<u>Quantity</u>
NTDK78AA	AC/DC PWR Supply	2
NTDW60BB	MGC	2
NTDW61BA	CPPM (CS)	1
NTDW61BA	CPPM (SS)	1
NTDW65AAE5	MC32S	1
NT8D14BB	UNIV TRUNK	1
NT8D09AL	ANLG LC	2
NT8DO2GA	DLC	8
ISP1100 1U	SS	1
IBM X306m	APPGW	1

<u>Software (SLT Report)</u>	<u>Total</u>	<u>Left</u>	<u>Used</u>
System type is - Communication Server 1000E/CP PM			
CP PM - Pentium M 1.4 GHz			
IPMGs Registered	2		
IPMGs Unregistered	0		
IPMGs Configured/unregistered	0		
ANALOG TELEPHONES	24	0	24
CLASS TELEPHONES	0	0	0
DIGITAL TELEPHONES	112	40	72
DECT USERS	0	0	0
IP USERS	58	0	58
BASIC IP USERS	0	0	0
TEMPORARY IP USERS	0	0	0
DECT VISITOR USER	0	0	0
ACD AGENTS	10	10	0
MOBILE EXTENSIONS	0	0	0
AVAYA SIP LINES	0	0	0
THIRD PARTY SIP LINES	0	0	0
PCA	25	25	0
ITG ISDN TRUNKS	0	0	0
H.323 ACCESS PORTS	0	0	0
AST	26	26	0
SIP CONVERGED DESKTOPS	0	0	0
SIP CTI TR87	25	25	0
SIP ACCESS PORTS	33	10	23
RAN CON	0	0	0

MUS CON	0	0	0
TNS	32760	32332	428
ACDN	24000	23998	2
AML	16	16	0
IDLE_SET_DISPLAY			
LTID	32760	32760	0
RAN RTE	512	512	0
ATTENDANT CONSOLES	32760	32760	0
BRI DSL	10000	10000	0
DATA PORTS	32760	32760	0
PHANTOM PORTS	32760	32760	0
TRADITIONAL TRUNKS	32760	32757	3
DCH	255	254	1

Appendix A-3, System Size, page 1

CPCC Levine Campus CS1000E Rls. 5.5

<u>Part Number</u>	<u>Part Name</u>	<u>Quantity</u>
NTDK78AA	AC/DC PWR Supply	1
NTAK04AA	AC/DC PWR Supply	1
NTDW60BB	MGC	2
NTDW61BA	CPPM (CS)	1
NTDW61BA	CPPM (SS)	1
NTDW65AAE5	MC32S	1
NT8D09AL	ANLG LC	3
NT8D14BB	UNIV TRUNK	2
NT8D02EB	DLC	10
ISP1100 1U	SS	1
IBM X306m	APPGW	1

<u>Software (SLT Report)</u>	<u>Total</u>	<u>Left</u>	<u>Used</u>	<u>Overflow</u>
System type is - Communication Server 1000E/CP PM				
CP PM - Pentium M 1.4 GHz				
IPMGs Registered:	2			
IPMGs Unregistered:	0			
IPMGs Configured/unregistered:	0			
ANALOGUE TELEPHONES:	48	7	41	
CLASS TELEPHONES:	0	0	0	
DIGITAL TELEPHONES:	288	161	127	

DECT USERS:	0	0	0	
IP USERS:	170	20	150	
BASIC IP USERS:	0	0	0	7
TEMPORARY IP USERS:	0	0	0	
DECT VISITOR USER:	0	0	0	
ACD AGENTS:	10	10	0	
MOBILE EXTENSIONS:	0	0	0	
AVAYA SIP LINES:	0	0	0	
THIRD PARTY SIP LINES:	0	0	0	
PCA:	25	25	0	
ITG ISDN TRUNKS:	0	0	0	
H.323 ACCESS PORTS:	23	0	23	
AST:	26	26	0	
SIP CONVERGED DESKTOPS:	0	0	0	
SIP CTI TR87:	25	25	0	
SIP ACCESS PORTS:	33	10	23	
RAN CON:	0	0	0	
MUS CON:	0	0	0	
TNS:	32760	32217	543	
ACDN:	24000	24000	0	
AML:	16	16	0	
IDLE_SET_DISPLAY				
LTID:	32760	32760	0	
RAN RTE:	512	512	0	
ATTENDANT CONSOLES:	32760	32760	0	
BRI DSL:	10000	10000	0	
DATA PORTS:	32760	32760	0	
PHANTOM PORTS:	32760	32760	0	

TRADITIONAL TRUNKS :	32760	32757	3	
DCH :	255	254	1	

Appendix A-4, System Size, page 1

Option 81c – Central Campus TE111

CE
 Network Group 1
 Shel 0
 Last Update: 04/19/
 2010

	NT8D29AB	SER B QPC441F	FIJI NTRB33AF Rise 3	Periph Sig QPC43R	ConfTds NT8D17FA Rise 1	Dual PRI NT5D12AD Rise 1	Net NT8D04AA Rise 17						CLKC NTRB53AA Rise 26			1	2	3	4	5	6	7	8	9	10	11	12	13	14			
																3PE	IGS 1	IGS 0	PS	SPL	SPL	SPL	SPL									
	CE Power Sup																															

CE
 Network Group 1
 Shel 1
 Last Update: 04/19/
 2010

	NT8D29AB Rise 4																CLKC NTRB53AA Rise 6	13	
																		12	
																	Fnet NT1P63CA Rise 6	11	SPL
																		10	
																	Local Carrier I/F NTR51AD Rise 3	9	SPL
																		8	
																	Net NT8D04BA Rise 6	7	SPL
																	Dual PRI NT5D12AD Rise 1	6	
																	Conf / Tds NT8D17FA Rise 4	5	SPL
																	Periph Strng QPC43R	4	PS
																	FIJI NTRB33AF Rise 3	3	IGS 0
																		2	IGS 1
																	SER B QPC441F	1	3PE
CE Power Sup																			

Appendix A-4, System Size, page 2

Core / Net Module
 Network Group 0
 Shel 0
 Last Update: 04/19/
 2010

NT8D29BA Rise 2	CE Power Sup	CP PIV NT4N39AAE5 Rise 1	
		Sys Util NT4N48BAE5 Rise 1	C15
			C14
			C13
			C12
			C11
			C10
		CNI NT4N65AC Rise 8	C9
		SER B QPC41F	
		Periph Snlg QPC43R SER D	10
			11
		FIJI NTRB33AF Rise 3	9
			8
			7
		Local Carrier I/F NT7R51AD Rise 1	6
			5
		Dual PRI NTDB12AD Rise 1	4
	3		
Local Carrier I/F NT7R51AD Rise 3	2		
Dual PRI NT5D12AD Rise 1	1		
Conf / TDS NT8D17FA Rise 17	0		

IPE
 Loo 28
 Bhel 0
 Last Update: 04/19/
 2010

NT 8D06AB Rles 3	NT 8D21AB Rles 1	Anlg M/W/LC NT8D09AL Rles 4	15
		Anlg M/W/LC NT8D09AL Rles 4	14
		Anlg M/W/LC NT8D09AL Rles 4	13
		Anlg M/W/LC NT8D09AL Rles 4	12
		Anlg M/W/LC NT8D09AL Rles 4	11
		Anlg M/W/LC NT8D09AK Rles 5	10
		Dgll LC NT8D02GA Rles 4	9
		Dgll LC NT8D02GA Rles 4	8
		Count - 4 NT8D01BC EXPC - 0 4 Rles 12	Count
		CP-PM NTDW66AAE5 Rise 3 10.1.10.14 - Node 2 SS	7
			6
			5
			4
		Dgll LC NT8D02GA Rles 4	3
		Dgll LC NT8D02GA Rles 4	2
Dgll LC NT8D02GA Rles 4	1		
MIRAN NTAG36AB Rles 1	0		
PE Power Sup	RingGen		

IPE
 Loo 28
 Bhel 1
 Last Update: 04/19/
 2010

NT 8D06AB Rles 3	NT 8D21AB Rles 1	Anlg M/W/LC NT8D09AL Rles 4	15
		Anlg M/W/LC NT8D09AL Rles 4	14
		Anlg M/W/LC NT8D09AL Rles 4	13
		Anlg M/W/LC NT8D09AL Rles 4	12
		Anlg M/W/LC NT8D09AL Rles 4	11
		Anlg M/W/LC NT8D09AK Rles 5	10
		Dgll LC NT8D02AB Rles 4	9
		Dgll LC NT8D02GA Rles 4	8
		Count - 4 NT8D01BC EXPC - 01 Rles 12	Count
		Local Mini-Carrier EXT NT5D65CA Rles 7	7
			6
		Local Mini-Carrier EXT NT5D65CA Rles 5	5
		Local Mini-Carrier IF NT5D64CB Rles 4	4
			3
		MICB NT5D51AB Rles 2	2
MICB NT5D51AB Rles 2	1		
MIC32S NTDW65AAE5 Rise 4	0		
PE Power Sup	RingGen		

IPE
 Loo 36
 Bhel 0
 Last Update: 04/19/
 2010

NT 8D06AB Rles 3		DgH LC NT8D02GA Rise 4	15
		DgH LC NT8D02GA Rise 4	14
		DgH LC NT8D02GA Rise 4	13
		DgH LC NT8D02GA Rise 4	12
		DgH LC NT8D02GA Rise 4	11
		DgH LC NT8D02GA Rise 4	10
		DgH LC NT8D02GA Rise 4	9
		DgH LC NT8D02GA Rise 4	8
		Count - 4 NT8D01BC EXPC - 05 Rise 12	Count
		DgH LC NT8D02GA Rise 4	7
		DgH LC NT8D02GA Rise 4	6
		DgH LC NT8D02GA Rise 4	5
		MC32S NTDW65AAE5 Rise 4	4
		DgH LC NT8D02GA Rise 4	3
		DgH LC NT8D02GA Rise 4	2
	DgH LC NT8D02EB Rise 3	1	
		0	
PE Power Sup	RingGen		

IPE
 Loo 36
 Bhel 1
 Last Update: 04/19/
 2010

<p style="text-align: center;">NT 8D06AB Rise 3</p>		DgH LC NT8D02GA Rise 4	15
		DgH LC NT8D02GA Rise 4	14
		DgH LC NT8D02GA Rise 4	13
		DgH LC NT8D02GA Rise 4	12
		DgH LC NT8D02GA Rise 4	11
		DgH LC NT8D02GA Rise 4	10
		DgH LC NT8D02GA Rise 4	9
		DgH LC NT8D02GA Rise 4	8
		Count - 4 NT8D01BC EXPc - 03 Rise 10	Count
		DgH LC NT8D02GA Rise 4	7
		DgH LC NT8D02GA Rise 4	6
		DgH LC NT8D02GA Rise 4	5
		DgH LC NT8D02GA Rise 4	4
		DgH LC NT8D02GA Rise 4	3
		DgH LC NT8D02GA Rise 4	2
	DgH LC NT8D02EA Rise 4	1	
	DgH LC NT8D02EA Rise 4	0	
PE Power Sup	RingGen		

IPE
 Loo 52
 Bhel 0
 Last Update: 14/19/
 2010

NT 8D06AB Rles 3	NT 8D21AB Rles 1	MGate NTRB18CA Rise 4	15
		Dgll LC NT8D02GA Rise 4	14
		DTR NT8D16AB Rise 3	13
		XOPS Anlg LC NT8DR20BA Rise 1	12
		Dgll LC NT8D02GA Rise 7	11
		Dgll LC NT8D02AB Rise 4	10
		Dgll LC NT8D02AB Rise 4	9
		Dgll LC NT8D02GA Rise 4	8
		Count - 4 NT8D01BC EXPC - 02 Rise 10	Count
		CP-PM NTDW66AAEF Rise 3 10.1.10.12 - Node 1 SS	7
			6
			5
			4
			3
			2
Dgll LC NT8D02GA Rise 4	1		
Unlv Ttk NT8D14BB Rise 13	0		
PE Power Sup	RingGen		

IPE
 Loo 52
 Bhel 1
 Last Update: 04/19/
 2010

NT 8D06AB Rlse 03	NT 8D21AB Rlse 02	MGate NTRB18CA Rise 04	15
		DTR NT8D16AB Rise 04	14
			13
			12
			11
			10
			9
		MC32S NTDW65AAE5 Rise 4	8
		Count - 4 NT8D01BC EXPC - 08 Rise 10	Count
			7
			6
			5
		Line Side T1 Interface NT5D11AE Rise 2	4
			3
			2
CP-PM NTDW66AAE5 Rise 3 10.1.10.13 - Node 2 SS	1		
	0		
PE Power Sup	RingGen		

CPC
Sloan
Remote IPE Shelf (1 of 2)
Bayface
Updated: 4/15/2010

A0759620
Fiber Remote
Multi-IPE Interface
Multi-Mode

NT 8D06AB Ries 3	NT 8D21AB Ries 3		Anlg MMWLC NT8D09AK Ries 4	15
			Anlg MMWLC NT8D09AL Ries 4	14
			Anlg MMWLC NT8D09AK Ries 1	13
			Anlg MMWLC NT8D09AK Ries 1	12
			Anlg MMWLC NT8D09AK Ries 1	11
			Anlg MMWLC NT8D09AK Ries 1	10
			Anlg MMWLC NT8D09AK Ries 1	9
			Count-4 NT8D01BC Controller	8
			Anlg MMWLC NT8D09AK Ries 1	7
			Anlg MMWLC NT8D09AK Ries 1	6
			Dgfl LC NT8D02GA Ries 4	5
			Dgfl LC NT8D02GA Ries 4	4
			Dgfl LC NT8D02GA Ries 7	3
			Dgfl LC NT8D02GA Ries 4	2
			Anlg MMWLC NT8D09AK Ries 1	1
PE Power Sup	RingGen	0		

CPC
Facilities Services Center
Remote Carrier
Bayface
Updated: 4/15/2010

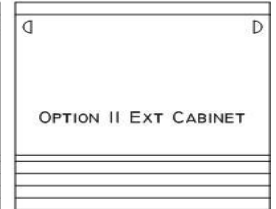
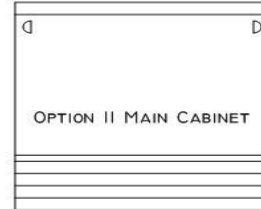
D D
Remote Carrier
Wall Cabinet

NTDK78AA Ries 4	Remote Carrier I/F NT7R52AD Ries 4																						
Power Sup	Cont	0	1	2	3	4	5	6	7	8	9												

Harper Option 11

CPC Harper Meridian 1 Option 11

Option 11
Main Cabinet
Last Update: 4/15/2010



NTDK78AA Rles 4	MGC NTDW60B8E5 Rise 1	1
	CP-PM NTDW61BAE5 Rise 3	2
	CP-PM NTDW61BAE5 Rise 3	3
	MC32S NTDW65AAE5 Rise 4	4
	Unit Trk NT8D14BB Rise 13	5
		6
	Anlg MWLC NT8D09AL Rise 4	7
	Anlg MWLC NT8D09AL Rise 4	8
		9
		10 MM1
		MM2
	MM3	
Power Sup	SSC/ Fbr Rcv	

- **THE STATE:** Is the state of North Carolina and its agencies.
 - **ITS:** Office of Information Technology Services
 - **OFFEROR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
 - **TERM CONTRACT:** a contract in which a source of supply is established for a specified period of time for specified services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
 - **TECHNICAL SERVICES CONTRACT:** A contract to provide for information technology specialty services for specific projects or assignments.
 - **ITS CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or services. These contracts are in place for the convenience of the state and use of them is optional.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
3. **NOTICE TO VENDORS:** All bids are subject to the provisions of the Instructions to Vendors, special terms and conditions specific to this Invitation for Bids, the specifications, and the ITS Terms and Conditions. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** *The State objects to and will not evaluate or consider any additional terms and conditions submitted with a Vendor response.* This applies to any language appearing in or attached to the document as part of the Vendor's response. Bids with terms and conditions attached will be subject to rejection.
 4. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) ITS Terms and Conditions, and (4) Instructions to Vendors.
 5. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer shall be valid for 30 days from the date of bid opening.
 6. **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
 7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each Vendor must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. **Only information that is received in response to this IFB will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.
 8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this 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 protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the purchasers in the Office of Information Technology Services those products or packaging they offer which have recycled content and that are recyclable.
 9. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from ITS. The Vendor is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
 10. **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 extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
 11. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item bid. In addition, on agency specific or term contracts, ITS reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than

- one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by ITS to be pertinent or peculiar to the purchase in question.
12. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the Vendor's expense. Written request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become the property of the State. Each individual sample must be labeled with the Vendor's name, bid number, and item number. A sample, on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
 13. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation, that is over \$25,000, they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within 15 calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bid status and Award notices are posted on the Internet at <http://www.ips.state.nc.us>. **All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1102 - .1121.**
 14. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.

TERMS AND CONDITIONS

1) DEFINITIONS

- a) "Agency" means the Agency purchasing the goods or services.
- b) "Software" is "Packaged Copyrighted Software Products" (unless otherwise identified) as used in 9 NCAC 06B.1301(a) and means Computer Software that is used regularly for other than governmental purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices, that is considered "shrink-wrap" or "clickwrap", that is or may be generally licensed by "shrink-wrap" or "clickwrap" licenses, or Computer Software that does not constitute Custom or Modified Software and is regularly sold, licensed or leased by the Vendor to governmental entities to meet governmental requirements.
- c) "Computer" means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the Data.
- d) "Computer Data Base" means a collection of data in a form capable of being processed and operated on a Computer.
- e) "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor or controller that is designed to cause the Computer, processor or controller to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and maintenance/diagnostics programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer Programs may be either machine dependent or machine-independent, and may be general purpose in nature or be designed to satisfy the requirements of a particular user.
- f) "Computer Software" or "Software" means Computer Programs and Data Bases.
- g) "Computer Software Documentation" means technical data and information comprising Computer listings and printouts, in human readable form that:
 - i) Documents the design or details the Computer Software
 - ii) Explains the capabilities of the Software, or
 - iii) Provides operating instructions for using the Software to obtain desired results from a Computer.

h) "Custom or Modified Software" means Software that may be modified by the State, or by Vendor at the State's request or direction to perform in accordance with specifications.

i) "Data" means recorded information, regardless of form or method of recording.

j) "Hardware" includes Computers, printers, attached equipment or peripherals or other equipment utilized for the State's intended purposes as expressed in the solicitation documents.

k) "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.

l) "State" shall mean the State of North Carolina, the Office of Information Technology Services as an Agency, or in its capacity as the Award Authority.

m) "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates maintenance and support services, consulting, training and other support services provided by or through Vendor.

n) "Use", in the context of Computer Software execution and operation in Section 2 hereinbelow, means storing, loading, installing, executing or displaying Software on a Computer, processor or controller, or making a copy of Software for archival or backup purposes only.

2) SOFTWARE LICENSE

a) Vendor grants the State a personal non-transferable and non-exclusive right to use, in object code form only, all Software and related documentation furnished to the Agency under this Agreement. This license grant shall be limited to use with the Hardware (if any) or Products (if any) for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed in writing. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the Vendor's standard agreement.

b) Software provided pursuant to this Solicitation may, in some circumstances, be accompanied by a clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the installation process for the Software. The sole purpose of any clickwrap agreement shall be to operate as the mechanism for the installation of the Software. All terms and conditions of any clickwrap agreement provided with any Software solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Software.

c) The State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set forth in this Agreement, and any Exhibits or Amendments hereto. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Software; or portion thereof.

d) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, and consistent with the security, records retainage or other policy of the Agency for archival or emergency purposes, or to replace a worn copy; but not for use in preparing derivative works unless expressly allowed by the Agreement or subsequent Statements of Work. Any copy of the Software or documentation must contain the same copyright notice and proprietary markings that are on the original Software.

e) Use of Software on any Products other than that for which it was obtained, removal of Software from the United States or any other material breach shall automatically terminate this license.

f) The State's license includes the right to upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's licensees without a separate maintenance or support agreement. Vendor's right to a new license for new version releases of the Software shall not be abridged by the foregoing.

g) Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Vendor or subsequently upgraded by Vendor.

h) The State's license neither transfers, vests nor infers any title or other ownership right in any intellectual property right of Vendor, or any third party. The State's license neither transfers, vests nor infers any title or other ownership right in any source code associated with the Software unless otherwise

agreed by the parties, and will not be construed as a sale of any ownership rights in the Software, unless Custom or Modified Software is being developed as a Work For Hire in response to the State's solicitation documents.

i) The State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

3) USE OF SOFTWARE AND INFORMATION

a) The State agrees that any Software or technical and business information owned by Vendor ("Information") or its suppliers or licensors and furnished to the State under this Agreement shall be and remain the property of the Vendor, or other party, respectively.

b) All Software and information furnished to the State under this Agreement

i) Shall be used by the State only to install, operate or maintain the Product for which they were originally furnished;

ii) Shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this agreement; and

iii) Shall, together with any copies except copies for the Agency's and State's archival purposes containing the State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and

iv) All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: NCGS § 132-1, et. seq.

c) Transfer of Software or program license:

i) Software may be transferred within the United States to any location for the State's normal operations upon written notice to the Vendor without additional cost(s). Transfers for temporary uses arising as a result of a disaster or disaster recovery test may be effected without notice to the Vendor; provided, however, that the State will employ its best efforts to advise the Vendor of any disaster related transfer requiring more than ten (10) business days. All other transfers may be permitted only with Vendor's prior written consent, and such consent shall not be unreasonably withheld. Transfers requiring Vendor's consent may be subject to an additional license fee.

ii) The rights granted herein are restricted for use solely by the State. The State may not authorize or allow the use or marketing of the Software/Products by or to a third party, and may not assign or transfer the Software or Products to a third party without the prior written consent of Vendor. Any assignee or transferee must execute a separate agreement with Vendor. Any such assignment or transfer shall terminate the obligations of the State under this Agreement

iii) Custom or Modified Software, if solicited by the State, is being developed or modified exclusively for the State, and such Custom or Modified Software, all related data, all copyrights in the Custom or Modified Software and derivative works belong exclusively to the State and shall be transferred to the State upon creation.

4) WARRANTY

a) Minimum warranties for Products shall include:

i) On the delivery date the Products and the associated Computer operating system Software will be in good working order (operating in conformance with Vendor's standard specifications and functions). Unless otherwise specified in the solicitation, the warranty for other suppliers' Software is included in the suppliers' Software package and is provided directly from the supplier.

ii) The warranty shall be as provided or specified in the state's solicitation documents and shall begin on the day of successful installation. If no warranty period is specified, the warranty period shall be Vendor's standard warranty period for the Products, commencing the day of successful installation.

iii) The state shall notify Vendor if any Product is not in good working order during the warranty period. Vendor shall, at its option, either repair or replace any Product reported as not in good working order during the warranty period without charge to the State. The repair or replacement Products must be new or equivalent to new in performance and fully warranted the

same as new. All returned Products will become property of Vendor at the time the Product is either placed in shipment to Vendor, or picked up by Vendor.

iv) The service provided during the warranty period is dependent upon the acceptable warranty option selected by the State and indicated in the State's solicitation document. If no warranty option is indicated, Vendor will provide their standard warranty service for the Product, unless otherwise agreed by the parties.

v) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates and terms set forth in such writing.

b) Software warranties shall include the following:

i) Vendor warrants the media (comprising diskettes, tapes or other media) to be free of defects in materials or workmanship under normal use for ninety (90) days from the date of acceptance unless otherwise agreed. Vendor shall replace any media reported as not in good working order during the warranty period without charge to the State. If Vendor is unable to replace the Software, Vendor shall refund the full amount of the Software purchase paid by the State.

ii) In addition to the warranty exclusions stated in Section 5, Vendor does not warrant that the operation of the Software will be uninterrupted or error free, or that the Software functions will meet the State's requirements unless developed as Customized or Modified Software. The State assumes the risk of any damage or loss from its misuse or inability to use the Software.

iii) For any Customized or Modified Software provided pursuant to this Agreement, Vendor warrants that for a period of one (1) year after the State accepts said Software, it will operate and perform in accordance with the functions and specifications set forth in the solicitation and error free as the solution for the Agency. This express warranty applies only if the State specifically identifies the Hardware environment in which the Customized or Modified Software will be installed or operated, or if it is used in connection with Hardware acquired under this Agreement.

iv) Unless otherwise required by the State: Vendor warrants that its support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date support is provided or performance of the service. For a period of ninety (90) days after delivery or ninety (90) days after successful installation, Vendor or its suppliers shall provide telephone assistance to the State during the State's normal business hours.

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

i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;

ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;

iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.

iv) The Software does not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the State's ability to use the Software for the term of this Agreement.

5) WARRANTY EXCLUSIONS

a) Except as stated in Paragraph 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, and specifically disclaim warranties of merchantability or fitness for a particular purpose as provided by N.C.G.S. §§25-2-316, 25-2-313 and 25-2-315; and as may be amended.

b) The warranty provided in Section 4 does not cover repair for damages, malfunctions or service failures caused by:

i) Actions of non-Vendor personnel;

ii) Failure to follow Vendor's installation, operation or maintenance instructions and/or services provided to the State;

iii) Attachment to the Products of non-Vendor products or failure of Products not maintained by Vendor unless such installation or use is approved in writing by the Vendor; or

iv) Force Majeure conditions set forth hereinbelow.

6) INDEMNITY

a) Vendor shall indemnify and hold harmless the State/Agency from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney's fees, that are caused by or arise from, the negligent or wrongful acts or omissions of the Vendor under this Agreement and that cause death or injury or damage to property or that arise out of a failure to comply with any State or federal statute, law, regulation or act.

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

- i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
- ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

7) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

a) For purposes of the exclusive remedies and limitations of liability set forth in this Paragraph, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

b) Vendor's entire liability and the State's exclusive remedies against Vendor for any damages caused by any Product defect or failure or arising from the performance or non-performance of any work, regardless of the form of action, whether in contract, tort, including negligence, strict liability, or otherwise, shall be:

- i) For infringement, the remedies set forth in Paragraph 6(b) above;
- ii) For warranty claims based upon failure of purchased or leased Products or Software, the remedies stated in Paragraph 4 herein. If Vendor is unable, despite reasonable efforts, to repair or replace the Product(s), the State shall have the right during the warranty period to return the Products for a refund of the purchase price; and
- iii) For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:
 - (1) To recover direct costs including replacement Products, if any, attributable to Vendor's delay; but specifically excluding incidental or consequential damages, and
 - (2) To cancel the order without incurring cancellation charges; and
- iv) For proven damages to real or tangible personal property, excluding the State's other Software, data and data files, or for bodily injury or death to any person negligently caused by Vendor, and
- v) For claims other than set forth in Paragraph 7b (i-iv), Vendor's liability shall be limited to direct damages, and such sums shall not exceed two (2) times the Agreement value.

c) Should any Product or Software 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 to procure for the State the right to continue using the Product or software, or to replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to take back any affected Products or Software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute Products. If, in the sole opinion of the State, the return of such Products or Software 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.

- d) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded product or Product or Software, or from the continued use of the good(s) or Services and Products after receiving notice they infringe on a trade secret of a third party.
- e) Except to the extent provided in subsection 7 b) above, and with the further exceptions of intellectual property rights infringement actions, the state's constitutional rights as a sovereign, and penalties imposed upon the state by any federal entity or expenditures of public funds required or resulting from an operational failure of the Products or Software provided hereunder, but notwithstanding any other term to the contrary contained in the Agreement, neither party shall, under any circumstances, be liable to the other party or its affiliates for:
 - i) any claim based upon any third party claim,
 - ii) any consequential, incidental or indirect damages of any nature whatsoever, including, without limitation, lost profits, lost savings or other consequential damages, whether resulting from delays, loss of data, interruption of service or otherwise, even if a party or its affiliates have been advised of the possibility of such damages, or
 - iii) any punitive or exemplary damages of any nature whatsoever.

8) SUPPORT AND MAINTENANCE

- a) Except as specifically provided herein or in an approved attachment hereto, and unless otherwise consistently provided by Vendor's standard agreement for support, and except for the provisions in the Vendor License Agreements paragraph above, an order for support will constitute the State's acceptance of the terms of the standard agreement for Support in effect on the date of the order, subject to the order of precedence set forth in the Solicitation.
- b) To be eligible for support, Products or Software must be in good operating condition and at then current specified revision levels, having all enhancements, modifications, updates, or upgrades supplied by Vendor. Vendor may charge its standard rates in effect on the date support service is provided in addition to any other charges if the Product(s) or Software do not conform to the specified revision levels.

9) PROGRAM RETIREMENT

- a) Unless otherwise provided in the Vendor's standard agreement, Vendor retains the right to retire a version of the Program and stop providing Maintenance, Updates or Services, upon providing one-hundred and eighty (180) days written notice to the State of its intent to do so. The decision to stop maintaining a version of the Program is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Program provided to the State and if the State has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, a newer version of the Program that supports substantially the same functionality as the licensed version of the Program. Newer versions of the Program containing substantially increased functionality will be made available to the State for an additional fee.
- b) Vendor may, at no additional charge, modify Products to improve operation and reliability or to meet legal requirements.
- c) Relocation of Products is the State's responsibility and may result in additional support charges and modified service response times. Products moved to another State facility or Agency may continue to be serviced subject to availability of a Vendor authorized support provider. Vendor is not required to provide support for non-qualified Products, nor Products not supplied under this Agreement. "Non-Qualified Products" are Hardware and Software not supplied or approved by Vendor, and Products for which the State does not allow Vendor to incorporate modifications. The State is responsible for removing non-qualified Products to allow Vendor to perform Support services.

d) Support does not cover any damage or failure cause by:

- i) Media and supplies or use of items not designed or designated for use with Products; or
- ii) Site conditions that do not conform to Vendor's previously established site specifications; or
- iii) Neglect, improper use, fire or water damage, electrical disturbance, transportation by the State, work or modification by persons other than Vendor personnel, or other authorized parties.

10) The State is responsible for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs.

11) TRANSPORTATION Transportation charges for software shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

12) TRAVEL EXPENSES **All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing services under this Agreement.

13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1030, or other provision of law.

14) AVAILABILITY OF FUNDS Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Products and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

15) PAYMENT TERMS The total License Fee and the Support Service or Maintenance Fee (provided the State subscribes or purchases such services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent contract years, if any, will be invoiced annually sixty (60) days prior to the anniversary date beginning each subsequent year. Increases in pricing for Support Services or Maintenance shall not exceed five percent (5%) per year following the first Contract year. Payment terms for software are Net 30 days after receipt of correct invoice or acceptance of software, whichever is later. Payment terms for services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card.

16) ACCEPTANCE CRITERIA Acceptance testing is required for all Vendor supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and

Vendor's technical representations. Acceptance of software or services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of software or services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following installation of any software deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.

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

18) ACCESS TO PERSONS AND RECORDS Pursuant to N.C. General Statute 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

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

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

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

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

23) TAXES The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.

24) GOVERNING LAWS, JURISDICTION, AND VENUE

a) This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

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

25) DEFAULT In the event any Deliverable furnished by the Vendor fails to conform to any material requirement of the specifications, notice of the failure is provided by the State and the failure is not cured within ten (10) days, or Vendor fails to meet the State's acceptance requirements, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7) and the obligation to informally resolve disputes as provided in Paragraph 29) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1207 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.

b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

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, or other catastrophic natural event or act of God.

27) COMPLIANCE WITH LAWS The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of

its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

28) TERMINATION Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

a) The parties may mutually terminate this Contract by written agreement at any time.

b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following

i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7). The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

29) DISPUTE RESOLUTION The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

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

31) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

32) ELECTRONIC PROCUREMENT (**Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document**): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement

Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

- a) **The successful vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. 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.
- b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice 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 correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. 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.
- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State 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.
- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

**Attachment A – Certification of Compliance With
Executive Order # 24**

The undersigned certifies, to the best of his or her knowledge and belief, that: By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. § 133-32.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee 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 Attachment and submitting a bid in response to the accompanying solicitation, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:	E-MAIL:
AUTHORIZED SIGNATURE:	DATE: