

<b>STATE OF NORTH CAROLINA</b> <b>Office of Information Technology</b> <b>Services</b>	<b>INVITATION FOR BIDS NO. ITS-005997</b>
	Bids will be publicly opened: December 19, 2012
	Contract Type: <b>Agency Specific Contract</b>
Refer <b><u>ALL</u> Inquiries</b> to: Kristen Burnette  E-Mail: <a href="mailto:kristen.burnette@nc.gov">kristen.burnette@nc.gov</a>	Issue Date: December 7, 2012  Commodity Number: <b>208-Microsoft Volume Licensing Software Authorized Education Reseller</b>
Telephone No.: (919)754-6678	Using Agency Name: <b>North Carolina Community College System</b>
<b>(See page 2 for mailing instructions.)</b>	Agency Requisition No. N/A

### **OFFER AND ACCEPTANCE**

This solicitation advertises the State's need for a reseller agreement for the Microsoft Campus and School Agreement for North Carolina Community College Systems office. 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 IFB, Microsoft Campus and School Agreement, 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.**

### **NOTICE TO VENDORS**

**Sealed bids**, subject to the conditions made a part hereof, will be received at this office **3900 Wake Forest Road, Raleigh, NC until 2:00 pm Eastern Standard Time** on the day of opening and then opened, for furnishing and delivering the goods and/or services as described herein. Refer to page 2 for proper mailing instructions.

Bids submitted via facsimile (FAX) machine in response to this Invitation for Bids will not be accepted. Bids are **subject to rejection unless submitted on this form.**

### **EXECUTION**

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion (G.S. 147-33-100).

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

<i>VENDOR:</i>	<i>E-MAIL:</i>	
<i>STREET ADDRESS:</i>	<i>P.O. BOX:</i>	<i>ZIP:</i>
<i>CITY &amp; STATE &amp; ZIP:</i>	<i>TELEPHONE NUMBER:</i>	<i>TOLL FREE TEL. NO</i>
<i>TYPE OR PRINT NAME &amp; TITLE OF PERSON SIGNING:</i>	<i>FAX NUMBER:</i>	

**AUTHORIZED SIGNATURE:****DATE:**

Offer valid for 45 days from date of bid opening unless otherwise stated here: \_\_\_\_ days (See Instructions to Vendors, Item 5). Prompt Payment Discount: \_\_\_\_ % \_\_\_\_ days (See Instructions to Vendors, Item 6).

**ACCEPTANCE OF BID**

If any or all parts of this bid are accepted, an authorized representative of Statewide IT Procurement shall affix their signature hereto and this document and 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 shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

**FOR STATEWIDE IT PROCUREMENT USE ONLY**

Offer accepted and contract awarded this \_\_\_\_ day of \_\_\_\_\_, 2012, as indicated on attached certification,

by \_\_\_\_\_ (Authorized representative of Statewide IT Procurement).

**DELIVERY INSTRUCTIONS:** Deliver one **(1) signed original** executed bid response, and one **(1) duplicate 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) **electronic executed copy** of its proposal on read-only CD/DVD(s). The files on the discs should not be password-protected and should be capable of being copied to other media.

**DELIVER TO:**

BID NUMBER: ITS-005997

Statewide IT Procurement Office  
Attn: Kristen Burnette, Contract Manager  
3900 Wake Forest Road  
Raleigh, NC 27609

**ADDENDUM TO IFB:** If 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 Vendor to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration is available at <http://www.ips.state.nc.us>.

**E-PROCUREMENT REGISTRATION:**

Goods purchased by the state will be processed through the NC@Your Service E-Procurement System. Vendors must be registered on the system in order to be able to receive orders. Statewide Vendor Registration can be accessed online by visiting <http://www.ncgov.com> and clicking the "Statewide Vendor Registration" link.

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**SECTION 1: IFB SCHEDULE****Bid Questions**

Due Date: December 12, 2012

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

Address: See page 2 or kristen.burnette@nc.gov

Instructions: Written questions will be received at kristen.burnette@nc.gov until date and time specified above. Please enter "Questions ITS-005997" as the subject for the email. 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 Kristen Burnette 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: December 19, 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 executed copy** of its proposal on read-only 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.**

**SECTION 2: INTENT, USE, DURATION AND SCOPE**

The purpose of this Invitation for Bid (IFB) is to establish an **authorized Microsoft Large Account Reseller (LAR)** for procurement of Microsoft Volume Licensing Software (MVLS). This MVLS will be obtain subscription licenses through the Microsoft Consortia; specifically, Campus and School Agreement entered into between North Carolina Community College Constituent Institutions and Affiliates (defined in Appendix A) and Microsoft Licensing, GP. Products and services will be provided according to the terms and conditions of this IFB, The Microsoft Campus and School Agreement, and any addenda thereto. The Vendor awarded this contract will be required to offer a complete line of products to support all requirements listed in this IFB.

The Microsoft Campus and School Agreement allows an eligible education institution to license one or more products on a subscription basis for its institution. To license software on a subscription basis means that the right to run the product is non-perpetual and continues only during the license period. Submittal of a subscription enrollment is required by Microsoft for participation in this program. This program allows North Carolina Community College Institutions and Affiliates to select between a one-year licensed period or a three-year licensed period. Accordingly, it is the State's intent to establish a three-year (3) contract for the subscription of Microsoft Volume Licensing Software to begin upon award of this bid. The initial term will be February 1, 2013 to January 31, 2016. The State reserves the right to extend the contract for 2 (two) additional years, in one (1) year increments, and to further amend the contract's intent of coverage as may be required by future Legislative, North Carolina Community College System Office, or State Chief Information Officer activities/requirements.

### **SECTION 3: VENDOR REQUIREMENTS AND QUALIFICATIONS**

1. The Vendor must be an approved Microsoft Education Large Account Reseller (LAR). The LAR must provide a letter from Microsoft that references this bid number ITS-005997 and confirms the Vendor is a Microsoft Education Large Account Reseller authorized to license and support the products required in this bid. Failure to provide a letter from Microsoft with the bid proposal will render bid non-responsive and will not be evaluated further.
2. The LAR will provide 3 current references, in Higher Education, within the last 12 months, for clients currently being managed under the Consortia Agreement version of the Microsoft Campus Agreement.

Please provide below three (3) references including Consortia name, contact name, e-mail address and phone #.

- 1) Consortia Name: \_\_\_\_\_  
 Campus: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_  
 Email address: \_\_\_\_\_  
 Phone# : \_\_\_\_\_
- 2) Consortia Name: \_\_\_\_\_  
 Campus: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_  
 Email address: \_\_\_\_\_  
 Phone# : \_\_\_\_\_
- 3) Consortia Name: \_\_\_\_\_  
 Campus: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_  
 Email address: \_\_\_\_\_  
 Phone# : \_\_\_\_\_

3. The LAR will be able to support at least a 3-year price option. Pricing is locked for 3 years, based on the term, and each organization will continue to be responsible for annual renewal. Please explain your ability to support this term/price option. Do you support this and how is price guaranteed?

Institutions and Affiliates receive proper credit for all Microsoft subscription against the Microsoft MLA. The Vendor is responsible for the resolution of any report discrepancies with Microsoft to

ensure that the North Carolina Community College Constituent Institutions and Affiliates get appropriate credit for all Microsoft software subscriptions.

4. The LAR must provide details regarding Electronic Software Distribution (ESD) and if any additional costs are associated with the ESD services. The LAR must provide and support the electronic software distribution program for students, faculty, and staff in support of Student Option, Work at Home Rights, and Home Use Program.
5. If a college chooses to do so, they may rely on physical media for installation of software. Please provide detailed information on media fulfillment. This should include how orders are processed, associated costs, delivery timelines, issue resolution/management, and return policies. Both physical media and ESD are a requirement and should be available based on college decision.
6. LAR is responsible for tracking the availability of product versions and advising customers of the current versions available. LARs must work with any entity purchasing a subscription under this contract to determine the appropriate version and the most cost effective approach to securing licenses, media, and documentation. Please explain how your LAR supports this requirement.
7. The LAR must support teleworking / remote staff. Many colleges support teleworking and/or remote staff, the products and services being licensed must be available to those people.

#### **SECTION 4: VENDOR REQUIREMENTS AFTER THE AWARD**

1. The LAR shall support the North Carolina Community College System Office and individual community colleges under existing Microsoft Campus and School Agreements with conversion to the new Consortia Agreement upon expiration of their existing agreement
2. The LAR shall agree to work with Microsoft to schedule a series of meetings (virtual, and in some cases, physical in-person meetings) at the discretion of the NCCCS or the individual colleges, to ensure the contract/renewal process is completed in a timely and orderly manner. These meetings must include the LAR and / or the Microsoft representative (at the discretion of the individual college) and representatives from the participating organization(s) to discuss the renewal process, how to make changes to enrollments (if needed), to update and educate on new features or changes to the Campus Agreement program, establish the dates when information needs to be submitted (e.g., enrollment numbers) etc. Awarded LAR is solely responsible for all travel costs related to these meetings.
3. At the determined open enrollment period, the LAR shall provide pricing including, but not limited to, desktop SKU w/core CAL (for Faculty and Staff), Windows Server and/or upgrade as appropriate, MS Office suite, MS Office 365, SharePoint, SharePoint core CAL, External connector, SQL, core CAL, Work at Home (WAH) for students, and Software Assurance.
4. The LAR must act as an intermediary with Microsoft whenever a campus has a question or needs assistance; and therefore must be thoroughly trained and experienced in the requirements and processes related to Microsoft consortia agreements, academic licensing programs and related software assurance benefits.

#### **SECTION 5: 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.

Successful bidder must be an authorized reseller for Microsoft.

**Vendor Utilization of Workers Outside the U.S.**: In accordance with Executive Order #60, the Vendors must detail in the bid response, the manner in which it intends to utilize resources or workers. 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

<p><i>Will any work under this contract be performed outside the United States?</i></p> <p><i>Where will services be performed:</i></p>	<p>YES _____ NO _____</p> <p>_____</p>
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## **SECTION 7: E-PROCUREMENT**

**This is not an e-procurement solicitation.** Paragraph #32 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services do not apply.

## **SECTION 6: DELIVERY**

**PHYSICAL DELIVERY:** The successful Vendor will complete delivery within fourteen (14) consecutive calendar days after receipt of purchase order. The State reserves the right to make the delivery offered a factor in the award of any contract resulting from this solicitation.

State your guaranteed physical delivery date:

Physical delivery will be made from \_\_\_\_\_ (city, state) within \_\_\_\_\_ consecutive calendar days after receipt of purchase order.

Partial delivery of items must be approved in writing or verbally by the requesting Agency in advance of shipment delivery.

**ONLINE DELIVERY:** As an alternative, the successful Vendor will make available online delivery within forty-eight (48) hours after receipt of a purchase order. Please note that the end user may or may not choose to receive the product on-line, this is just an option. If chosen, the successful Vendor will notify the end user via E-mail or Telephone with instructions on how to download the product online.

State your guaranteed online delivery date:

Online delivery will be made from \_\_\_\_\_ (website)  
within \_\_\_\_\_ consecutive calendar days after receipt of purchase order.

If circumstances beyond the control of the Vendor and/or Large Account Reseller result in a late delivery, it is the responsibility and obligation of the Vendor to notify the Purchasing Agent listed on the purchase order, in writing, immediately upon determining delay in shipment. The written notification should indicate the anticipated delivery date.

#### **SECTION 7: TRANSPORTATION CHARGES**

FOB DESTINATION. Software will be delivered to various locations within the State of North Carolina. Freight, handling, charges for pallets, charges for special shipping requirements and distribution charges shall be included in the total price for each item. Any additional charges included on the invoice shall not be honored for payment, unless authorized by change order by the end user. In cases where parties other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. Complete packing lists must accompany each shipment..

#### **SECTION 8: WARRANTY**

The standard warranty provided by Microsoft Campus and School Agreement section 13 will apply.

#### **SECTION 9: 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.

#### **SECTION 10: 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 09NCAC 06B. 0302 Information Technology Procurement).

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

#### **SECTION 11: 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 Public Records Law an inception in NC General Statute, 132-1 and following **must be clearly marked as such in the offer when submitted.**

## **SECTION 12: AWARD OF CONTRACT**

**Bid must be submitted on the forms provided herein. Bids submitted in any other format may be subject to rejection.**

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 #11.

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

## **SECTION 13: RESTOCKING FEE**

**There will be no restocking fee for software that is returned within 30 days of delivery that has not been opened. Shipping costs for mailing returns to Vendor are the constituent institution's responsibility.**

Indicate the restocking fee for software that is returned after the 30-day period  
\_\_\_\_\_ % **Restocking Fee**

## **SECTION 14: WEB SITE RESTRICTIONS**

The Vendor awarded this contract will not display any website at any time during this contract that allows orders for Microsoft products to be ordered on-line by the North Carolina Community College Constituent Institutions and Affiliates.

## **SECTION 15: CUSTOMER SUPPORT**

The awarded Vendor must provide local sales assistance at each of the North Carolina Community College Constituent Institutions and Affiliates locations when requested. Such assistance shall consist of sales, product demonstrations, new product release information both technical and operational, product delivery facilitation, onsite product selection analysis, and such other assistance as requested, in person, by telephone, or online.

LAR Customer Services/ Sales Support must be available 8:00am to 5:00pm EDT Monday – Friday.

## **SECTION 16: ORDERING INFORMATION**

Request for quotes and PO's must be processed within (2) business days

**Indicate Ordering Information:**

Vendor/Business Name \_\_\_\_\_  
 PO Box \_\_\_\_\_ Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
 Telephone Number \_\_\_\_\_ Toll Free Number \_\_\_\_\_  
 Fax Number \_\_\_\_\_ Vendor Federal ID Number \_\_\_\_\_

**Contact Person(s)**

**Contact person(s) fully trained and experienced in Microsoft Consortia Agreements.** If any of the listed contact person(s) change during the contract term, the Vendor must notify Karen Kelly at the North Carolina Community College System in writing at **200 W. Jones St. Raleigh, NC 27603** or by email at [kellyk@nccommunitycolleges.edu](mailto:kellyk@nccommunitycolleges.edu).

**Primary Contact Name:** \_\_\_\_\_ **Email address:** \_\_\_\_\_  
**Phone number:** \_\_\_\_\_ **Cell number:** \_\_\_\_\_

**Secondary Contact Name:** \_\_\_\_\_ **Email address:** \_\_\_\_\_  
**Phone number:** \_\_\_\_\_ **Cell number:** \_\_\_\_\_

**SECTION 17: CONTRACT UPDATES**

Requests for price changes will identify the Percentage Discount Less Microsoft Estimated Retail Price List (ERP) for the appropriate Microsoft product that is to be applied to the manufacturer's reference price to determine State prices under this contract. The quoted "percentage discount" applies to all Microsoft products whether they are listed at the time of award or not. Therefore, the percentage discount remains constant for the life of the contract.

See Section 18.

Price Decreases will become effective on the effective date of any/all Retail Price listings published by Microsoft.

**SECTION 18: COST SHEET**

North Carolina Community Colleges is establishing a Campus and School Agreement with Level B pricing on all Education subscriptions.

- A. Vendor must bid on a PERCENTAGE DISCOUNT OFF currently published Microsoft Estimated Retail Price list. The Vendor may increase the percentage discount or lower the list price, resulting in a lower cost to the State, during the life of the contract. Once established, List Prices may not be increased during the one or three year period, whichever is chosen.
- B. Percentage calculations should be to the nearest thousandth (.001).
- C. The Vendor must attach a copy of the most currently published Microsoft Estimated Retail Price List as named by Microsoft to its response.
- D. The Vendor must maintain the percentage discount off offered on all Microsoft product offerings (current and newly announced), products, and price revisions for the term of the contract. Failure to conform to the awarded price structure at any point during the term of the contract will subject the Vendor to penalties and cancellation, as deemed appropriate by the State, and described elsewhere within this document.

**THE PERCENTAGE INDICATED SHALL APPLY TO THE  
ENTIRE MICROSOFT PRODUCT LINE**

**COST SHEET**

The Vendor submitting this bid response will provide a \_\_\_\_\_% discount off currently published Microsoft Estimated Retail Prices for all Microsoft products. Vendor shall provide currently published list (and provide the date of the list) at the time Vendor submits proposal.

Bid response containing lowest cost percentage and meets the bid requirements will receive the award.

Vendors should provide **ONLY ONE** percentage discount (or blanket discount) off of the currently published Microsoft Estimated Retail Price which will be used in the evaluation of the bid. However, upon award Vendor may offer a higher % off of selected items.

**SECTION 19: ADDITIONAL INFORMATION**

- A. Any costs incurred by the Vendor in preparing or submitting offers are the Vendor's sole responsibility. Only information received in response to this request will be evaluated; reference to information previously submitted will not suffice.
- B. If the Vendor needs to attach additional sheets, the responses must follow the section format as is indicated throughout the IFB.** Each page should be numbered in sequence, indicate the Vendor's name, and the bid number. Please prepare the information in a straightforward, complete, and clear manner with emphasis on the ability to meet the requirements outlined.

**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.sustainablenc.org/main/orders.htm#156>

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?        \_\_\_\_\_%

Yes            No

Can this packaging be recycled?

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?

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**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.state.nc.us/doa/hub/welcome.htm>

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

Yes No

If applicable, specify classification. \_\_\_\_\_

## SECTION 20: SPECIAL TERMS

**PERFORMANCE:** The State will monitor and record Vendor performance as necessary over the duration of the contract with respect to satisfactory fulfillment of all contractual obligations. The State will consider a Vendor's past performance on State Term contracts as a factor in determining an award for this contract, and for any purchases made under any contract awarded. Performance assessments may comprise: delivery, condition of delivered goods, specification compliance of delivered goods, prompt and appropriate resolution of warranty claims, adequate servicing of contract in any and all aspects which the contract has stipulated, maintaining current state pricing on the web site, and prompt, complete and satisfactory resolution of any contractual discrepancies. Further, if a Vendor fails to adhere to the terms and conditions or other requirements of this contract or any subsequent solicitation issued under the framework of this contract, then the State, at its sole discretion, may choose to remove the Vendor from the contract (or subsequent solicitation requests issued under this contract). The State may elect to remove the Vendor on a temporary or permanent basis.

## SECTION 21: ITS INSTRUCTIONS TO VENDORS

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

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- 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.
15. 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.

## SECTION 22: TERMS AND CONDITIONS

### 1) DEFINITIONS

a) “Agency” means the Agency purchasing the goods or services.

b) Reserved

c) Reserved

d) Reserved

e) Reserved

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.

a) “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.

b) “Data” means recorded information, regardless of form or method of recording.

c) “Hardware” includes Computers, printers, attached equipment or peripherals or other equipment utilized for the State’s intended

purposes as expressed in the solicitation documents.

d) “Products” includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.

e) “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.

f) “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.

g) “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 – Please reference the Microsoft Campus and School Agreement (CASA2011Agr(NA)US(ENG)Oct2011 and its Amendment.

3) USE OF SOFTWARE AND INFORMATION LICENSE – Please reference the Microsoft Campus and School Agreement

(CASA2011Agr(NA)US(ENG)Oct2011 and its Amendment.

- 4) WARRANTY LICENSE – Please reference the Microsoft Campus and School Agreement (CASA2011Agr(NA)US(ENG)Oct2011 and its Amendment.
- 5) WARRANTY EXCLUSIONS LICENSE – Please reference the Microsoft Campus and School Agreement (CASA2011Agr(NA)US(ENG)Oct2011 and its Amendment.
- 6) INDEMNITY 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.
- 7) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

a) For purposes of the exclusive remedies and limitations of liability set forth in this Section 7, 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 Section 6(b) above;
- ii) For warranty claims based upon failure of purchased or leased Products or Software, the remedies stated in Section 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 Section 7.b(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 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

a) Unless otherwise provided by Vendor's standard agreement for support, or except as specifically provided, 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 – Please reference the Microsoft Campus and School Agreement (CASA2011Agr(NA)US(ENG)Oct2011 and its Amendment.

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 Vendor may be reimbursed for travel expenses arising under the performance of this Agreement 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.1102(f), 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 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.1030. The State reserves the right to require

performance guaranties pursuant to 09 NCAC 06B.1031 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 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.

**APPENDIX A**

## North Carolina Community Colleges

Alamance Community College	Martin Community College
Asheville –Buncombe Tech. Community College	Mayland Community College
Beaufort County Community College	McDowell Technical Community College
Bladen Community College	Mitchell Community College
Blue Ridge Community College	Montgomery Community College
Brunswick Community College	Nash Community College
Caldwell Community College	Pamlico Community College
Cape Fear Community College	Piedmont Community College
Carteret Community College	Pitt Community College
Catawba Valley Community College	Randolph Community College
Central Carolina Community College	Richmond Community College
Central Piedmont Community College	Roanoke-Chowan Community College
Cleveland Community College	Robeson Community College
Coastal Carolina Community College	Rockingham Community College
College of The Albemarle	Rowan-Cabarrus Community College
Craven Community College	Sampson Community College
Davidson County Community College	Sandhills Community College
Durham Technical Community College	South Piedmont Community College
Edgecombe Community College	Southeastern Community College
Fayetteville Technical Community College	Southwestern Community College
Forsyth Technical Community College	Stanly Community College
Gaston College	Surry Community College
Guilford Technical Community College	Tri-County Community College
Halifax Community College	Vance-Granville Community College
Haywood Community College	Wake Technical Community College
Isothermal Community College	Wayne Community College
James Sprunt Community College	Western Piedmont Community College
Johnston Community College	Wilkes Community College
Lenoir Community College	Wilson Community College
	NC Community College System Office

**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:
<b>AUTHORIZED SIGNATURE:</b>	DATE: