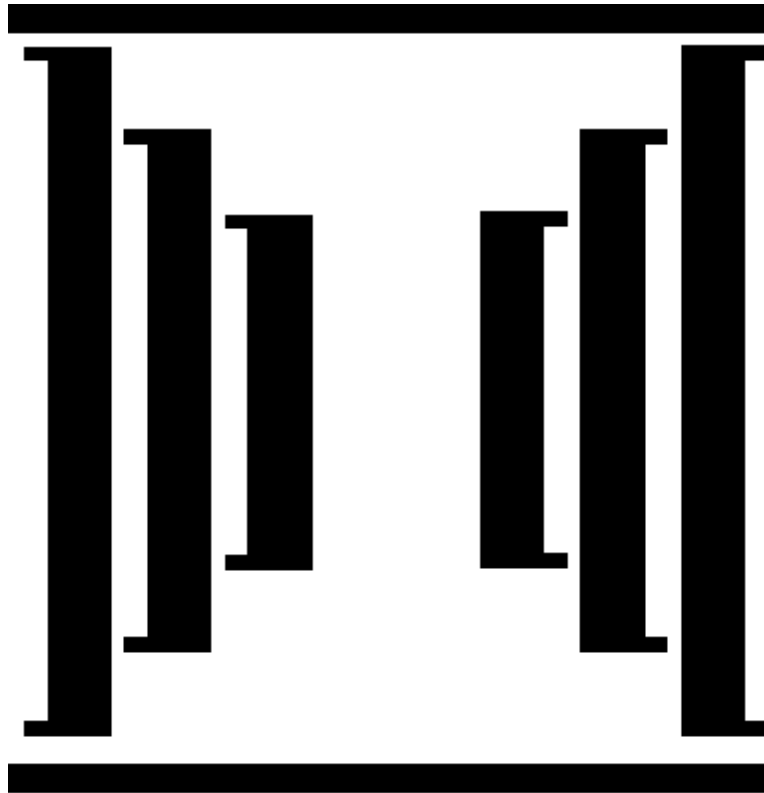


# ***NORTH CAROLINA COMMUNITY COLLEGE PURCHASING AND EQUIPMENT PROCEDURES MANUAL***



**THIRD EDITION**

**NORTH CAROLINA COMMUNITY COLLEGE SYSTEM  
Business and Finance Division  
Administrative and Facility Services Section  
Raleigh, North Carolina**

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## AGENCY CONTACTS

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5013 Mail Service Center Fax: (919) 807-7164  
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- ◆ N. C. Department of Administration Telephone: (919) 807-4500  
Division of Purchase and Contract  
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Street Address: 116 West Jones Street, Raleigh, NC 27603-8002

Mike Magnum	State Purchasing Officer, 919-807-4515
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- ◆ State IT Procurement Office Telephone: (919) 981-5295  
4101 Mail Service Center Fax: (919) 981-5374  
Raleigh, NC 27699-4101  
Street Address: 3512 Bush Street, Raleigh, NC 27609

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- ◆ State Surplus Property Agency Telephone: (919) 854-2160  
N.C. Department of Administration Fax: (919) 854-2275  
1310 Mail Service Center  
Raleigh, NC 27699-1310  
Street Address: 6501 Chapel Hill Rd. Highway 54 W. Raleigh, NC 27607

Randy Lee	State Property Officer
E-mail:	<a href="mailto:randy.lee@ncmail.net">randy.lee@ncmail.net</a>

- ♦ Office for Historically Underutilized Businesses  
1336 Mail Service Center  
Raleigh, NC 27699-1336

Telephone: (919) 807-2330  
Fax: (919) 807-2335

Bridget L. Wall                      Director  
E-mail: [huboffice.doa@ncmail.net](mailto:huboffice.doa@ncmail.net)

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- ♦ N. C. Association of Insurance Agents, Inc  
P O Box 1165  
Cary, NC 27512  
Physical Address: 101 Weston Oaks Court, Cary NC 27513

Telephone: (888) 274-6896  
Fax: (919) 821-3172

Karen Ashley Kerr              State Insurance Account Manager  
Email: [kkerr@iianc.com](mailto:kkerr@iianc.com)

(The current policy number is PR-CAP-104T680-0-00. Note that the last two digits change with the calendar year).

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- ♦ N. C. Department of Insurance  
P.O. Box 26387  
Raleigh, NC 27611

Telephone: (919) 661-5880

Joe Rippard                      Risk Manager

# WEBSITES



Office for Historically Underutilized Businesses  
<http://www.doa.state.nc.us/hub/>



<http://www.doa.state.nc.us/PandC/>



<http://www.its.state.nc.us/ITProcurement/Default.asp>



[http://www.ncgov.com/eprocurement/asp/section/ep\\_index.asp](http://www.ncgov.com/eprocurement/asp/section/ep_index.asp)



<http://www.doa.state.nc.us/ssp/ssp.htm>



<http://www.doc.state.nc.us/eprise/products/>



<http://www.ncleg.net/>

North Carolina Administrative Codes

[http://ncrules.state.nc.us/ncadministrativ\\_/title09governor\\_/chapter06office\\_/default.htm](http://ncrules.state.nc.us/ncadministrativ_/title09governor_/chapter06office_/default.htm)



<http://www.ncsbi.gov/>

CIS Documentation

[http://www.ncccs.cc.nc.us/IT\\_Projects/CIS\\_Project/Project%20Background/cis\\_project\\_menu.htm](http://www.ncccs.cc.nc.us/IT_Projects/CIS_Project/Project%20Background/cis_project_menu.htm)

Username: cisdoc

Password: isf1012

**Blue Ridge Environmental  
Health and Safety Institute**

<http://ehsi.blueridge.edu/>

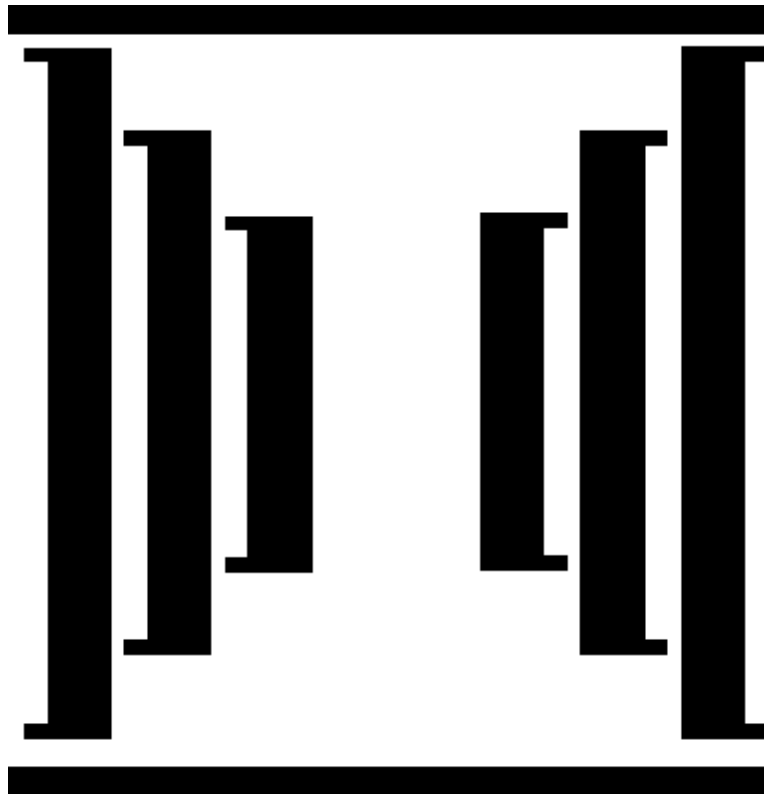
## **INTRODUCTION**

The information contained in this manual represents an effort by the Administrative and Facilities Services Section of the North Carolina Community College System to consolidate existing policies and procedures regarding the processes to be followed in the areas of purchasing, equipment inventory control, auditing, and disposal.

This manual should be used as a general guideline and not considered as a legal document. The laws and policies in these areas do change from time to time. As they change, we will try to keep you posted by providing inserts to keep this manual current. Any suggestions for improvements or additions to this manual will be appreciated.

A section entitled "Agency Contacts" lists the mailing address, phone number, and web page address for each agency. Their web pages provide a great deal of useful information.

# ***PURCHASING***



## **SECTION A**

## PURCHASING POLICIES AND PROCEDURES

The North Carolina General Statutes and the North Carolina Administrative Code govern purchasing policies and procedures for community colleges. These policies and procedures must be adhered to when the colleges purchase supplies, equipment, and materials, **regardless of the source of funds**. The Division of Purchase and Contract's Purchasing Manual (<http://www.doa.state.nc.us/PandC/agpurman.htm>) covers the State's purchasing procedures in greater depth and should be the primary source for purchasing information and used in conjunction with the North Carolina Community College Purchasing and Equipment Procedures Manual ([http://www.ncccs.edu/Facility\\_Services/index.html](http://www.ncccs.edu/Facility_Services/index.html)). Both manuals can be found on-line (See Agency Contacts page). Likewise, if a college is making a purchase of information technology equipment through the auspices of the Office of Information Technology Services (ITS), they should consult the North Carolina Information Technology Procurement Manual (<http://www.its.state.nc.us/ITProcurement/Documents/itpp.pdf>)

This section of the manual deals primarily with the questions most frequently asked concerning various purchasing procedures and does not attempt to cover all of the problems that you may encounter. Specific problems regarding purchasing should be addressed to P&C, ITS, or the Assistant Manager for Administrative Services at the North Carolina Community College System Office.

### GENERAL PURCHASING INFORMATION

#### A. Department of Corrections

North Carolina has a preference statute (G.S. 148-70) that controls the sale of prison industry products and prohibits their sale to the private sector. All agencies shall give preference to Department of Correction products in purchasing articles, products, and commodities which are needed and which are manufactured or produced within the State prison system and offered for sale to them by the Department of Correction. **This preference requirement also applies to all community colleges (except printing) and local school administrative units (except food and supplies for school food services and printing).**

Products available from the private sector, including those on term contracts, shall be purchased only when it is determined that the Correction Enterprises product will not satisfy the requirement or will not be available when needed. Correction Enterprises is required to keep the price of products substantially in accord with that paid by governmental agencies for similar products of equivalent quality.

#### B. Purchasing Benchmark (Delegation)

For purchases made through P&C, the **basic** purchasing benchmark (delegation) under which each community college has the authority to issue "open market" purchases for equipment and supplies up to and including \$10,000. Under G.S. 143-53(a)(2), the State Purchasing Officer at P&C has the authority to raise or lower the delegation upon written request from the college after consideration of the college's overall capabilities, including staff resources, purchasing compliance reviews, and audit reports. Community colleges that request an increase from the State Purchasing Officer at P&C, and meet the requirements, may have their delegation increased up to the present limit of \$25,000.

For purchases of information technology equipment, the purchasing benchmark for community colleges is \$25,000.

#### C. Purchase of Items on State Contract

The State has established various contracts with vendors for many of the items required by the colleges on a day-to-day basis. Where there is a state contract, the college must purchase from this contract unless they are exercising the Purchasing Flexibility Option outlined in paragraph D. Items on a state contract may be ordered directly from the vendor subject to any restrictions on the specific term contract. Although the purchasing delegation limits do **not** apply to purchases made from state contracts, certain state contracts do have a limit assigned to them. (Ex. Contract 204 A Computers, Delegation is \$75,000.)

#### D. Purchasing Flexibility Option

The 1998 Session of the General Assembly enacted legislation (G.S. 115D-58.14) which allows the community colleges to purchase items that are on a state term contract from other (non-certified) sources, if the purchase price, including the cost of delivery, is less than the cost under the State Term Contract. The colleges must comply with the following conditions:

1. The item must be exactly the same, the same manufacturer, model, style, etc. (For example, a 19-inch Sony TV is **not** the same as a 19-inch Panasonic TV!)
2. The purchase price, including the cost of delivery, is lower than the state contract price. **(This does not mean, "equal to").**
3. The cost of the purchase does not exceed the college's authorized purchasing delegation as established under G.S. 143-53.1
4. The college must keep a detailed record of all purchases made from non-certified sources. The record will contain the following:
  - a. A descriptive name of the item purchased;
  - b. The purchase order number;
  - c. The state term contract number for the item purchased;
  - d. The cost of the item on the state term contract;
  - e. The actual cost paid (including the cost of delivery but not the cost of taxes) for the item purchased from the non-certified source;
  - f. Savings per unit;
  - g. Number of units purchased; and,
  - h. Total savings.

**The colleges will submit a report of these purchases to the State Board of Community Colleges (State Board) as of June 30 and December 30. These reports must be received by August 1<sup>st</sup> and February 1<sup>st</sup>.** The college must maintain a copy of this report and documentation pertaining to these purchases for a period of three years for compliance review by P&C (See Section F for a sample form).

Staff of the Administrative and Facility Services section will review these semiannual reports, make an annual report to the State Board, and furnish P&C with a copy of this report.

D. Purchase of Non-Contract Items (Up to your Delegation)

Good purchasing practices mandate that you seek competition for all purchases. Each college should establish its own written procedures for making small purchases where the **total order** is for \$5,000 or less. For these small purchases, telephone or e-quotes may be used to establish competitive prices. A written record of the telephone quotes or e-quotes should be kept in the file. For purchases of more than \$5,000, but not over your delegation, users must seek written competition (RFQ), but are not required to advertise. It is recommended that a minimum of three written quotations be obtained. If three quotations cannot be obtained, it is recommended that users place a note in the file explaining the circumstances. P&C or ITS, for IT products, must handle all purchases of non-contract supplies and equipment that exceed the college's delegation. **Orders may not be split to avoid the competitive bid process.**

E. Purchase of Non-Contract Items (Over your Delegation)

Requisitions to purchase non-contract items over your college delegation must be sent to P&C for procurement action. All bids are posted on the Interactive Purchasing System (IPS). Users are encouraged to register for the IPS system to have the capability to enter the requisition into the IPS directly, rather than having the assistant of someone from P&C (See Agency Contacts page.) All bids are posted for ten business days. After competitive bids have been received through P&C, the bid package will be forwarded to the college for their review and recommendation for award. Upon receipt of the college's recommendation, P&C will request approval from the Board of Awards at its next meeting. **Orders may not be split to avoid the competitive bid process for orders exceeding your delegation.**

F. Purchase of Non-Contract Items, IT Related (Over your Delegation)

Requisitions to purchase non-contract items, **IT related**, over your delegation must be sent to the State IT Procurement Office for procurement action. All bids are posted on the Interactive Purchasing System (IPS). All bids are posted for ten business days. After competitive bids have been received by the IT Procurement Office, the packages are forwarded to the college for their review and recommendation for award. Upon receipt of the college's recommendation, IT will request approval from the Board of Awards at its next meeting. **Orders may not be split to avoid the competitive bid process for orders exceeding your delegation.**

G. Contractual Services (Including Consultant Services)

Under G.S. 115D-58.5(a) community colleges are governed by P&C in the purchasing of supplies, equipment, and materials. There is no reference in the General Statutes as to how community colleges are to acquire services. Given this lack of statutory authority, it is strongly recommended that each college establish its own written procedures for acquiring services and pattern those procedures after the same procedures for purchasing supplies, equipment, and materials per P&C Purchasing Manual, page 11, Section V. Community colleges **do not** have to seek the approval of P&C to enter into service contracts.

#### H. Commodity Codes, Term Contracts, and other relevant information

P&C and ITS provide term contracts, commodity codes, and other purchasing information on their web sites (See Agency Contacts page).

#### I. Waiver of Competition:

Under certain conditions, and otherwise if deemed to be in the public interest, competition may be waived. Conditions permitting waiver include, but are not limited to, the following:

1. Cases where performance or price competition are not available;
2. Where a needed product or service is available from only one source of supply;
3. Where emergency or pressing need is indicated;
4. Where competition has been solicited but no satisfactory offers received;
5. Where standardization or compatibility is the overriding consideration;
6. Where a donation predicates the source of supply;
7. Where personal or particular professional services are required;
8. Where a particular medical product or service, or prosthetic appliance is needed;
9. Where a product or service is needed for the blind or severely disabled and there are overriding considerations for its use;
10. Where additional products or services are needed to complete an ongoing job or task;
11. Where products are bought for "over the counter" resale;
12. Where a particular product or service is desired for educational, training, experimental, developmental or research work;
13. Where equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
14. Where items are subject to rapid price fluctuation or immediate acceptance;
15. Where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies which thwarts normal competitive procedures;
16. Where the amount of the purchase is too small to justify soliciting competition or where a purchase is being made and a satisfactory price is available from a previous contract;
17. Where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s);
18. Where a used item(s) is available on short notice and subject to prior sale.

Although competition may be waived for proper cause, its use is required wherever practicable. Where waiver is contemplated, agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions, when the expenditure is less than their respective benchmark or delegation.. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language, terms and conditions issued by P&C. Under an emergency or pressing need situation, a solicitation document requesting or inviting an offer(s) shall be issued by the agency, including standard language, terms and conditions issued by P&C, unless circumstances prohibit their use. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding an agency's benchmark or delegation, but are subject to the approval of P&C, except where otherwise permitted by rule.

If the dollar value of an agency contract exceeds ten thousand dollars (\$10,000), but is less than the agency's delegation, and the agency contemplates waiver of competition, then prior review by the Division is required, except were it qualifies as an emergency and time does not permit prior review. If the dollar value of a university contract exceeds ten thousand dollars (\$10,000), but is less than the university's delegation, and the university contemplates waiver of competition, then prior review by the Division may be requested by the university. The agency shall, or the university may, submit their request for this review via a requisition (or in some other acceptable format), which shall include a description of the requirement, the amount of the expenditure, the recommended vendor, and the justification for the waiver; and shall provide any additional documentation and justification deemed necessary by the SPO for conducting a thorough review.

#### J. Exemptions:

1. It is not mandatory for the items and services listed below to be purchased through P&C.
  - a. purchase of liquor;
  - b. perishable articles such as fresh meats, fresh fruit, fresh vegetables, fresh fish, poultry and eggs;
  - c. published material produced by others, such as newspapers, magazines, pamphlets, manuscripts, and books. Also maps, charts, globes, film, filmstrips and recordings (including tapes).
  - d. services provided by individuals by direct employment contracts with the state;
  - e. public utility services (gas, water and electricity);
  - f. services provided which are subject to published tariff rates as established by the State Utilities Commission;
  - g. services which are merely incidental to the purchase of supplies, materials or equipment such as installation services;
  - h. contracts for construction of and structural changes to public buildings;
  - i. personal services provided by a professional individual (person) on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts and similar professions; the exemption applies only if the individual is using

his/her professional skills to perform a professional task; a personal service may also be a consulting service;

- j. services provided directly by an agency of the state, federal or local government, or their employees when performing the service as a part of their normal governmental function.
2. In addition to products and services exempted by Statute, the SPO may exempt other products and services from purchase through P&C provided that the SPO makes findings:
  - a. that competition will not enhance the price that the State would receive for the product or service; and,
  - b. that competition will not enhance the quality of the product or service that the State would receive.
3. Soliciting competition for bakery products and dairy products shall be handled by the agency in accordance with Section V, regardless of the dollar value of the proposed contract, but awarded through P&C if over the agency's delegation.
4. It shall not be mandatory that local school administrative units purchase supplies and food for school food services under the Rules given in this Manual. However, these Rules do apply to equipment purchased for school food services.

#### K. Purchase of Vehicles

##### 1. For Administrative Use

In accordance with the provisions of G.S. 115D-32, local (non-state) funds shall be used for the purchase of automobiles, buses, trucks, and other motor vehicles **for administrative use**. These vehicles will be titled to the college's board of trustees, (e.g. The Board of Trustees of "Your College") and should be issued silver and black permanent tags and must be carried on the fixed assets inventory list. **They will not be insured by the state's fleet liability plan.**

##### 2. For Instructional Use

Vehicles to be used for instructional purposes, such as for Basic Law Enforcement Training (BLET), may be purchased from state equipment funds and must be carried on the fixed assets inventory list. Vehicles purchased with state funds are state owned and as such, **MUST BE TITLED TO THE "STATE BOARD OF COMMUNITY COLLEGES."** When titling vehicles purchased with state equipment funds, you should list the purchaser as the "State Board of Community Colleges - "Agency Code", (this is the three digit code assigned to all community colleges) and use the System Office address, (5013 Mail Service Center, Raleigh, NC 27699-5013). **Please show YOUR COUNTY on the application for title; not WAKE COUNTY.** (If you register the vehicle in Wake County, the vehicle will be subject to emission testing and local personal county taxes.) You should tell your local Division of Motor Vehicles (DMV) licensing agent that this is a state owned vehicle, and must have the yellow and black permanent tags. Many of the local DMV offices do not have the yellow plates and will have to order them from the Raleigh or Charlotte offices.

**FOR YOUR INFORMATION:** Incidental use of state owned vehicles for administrative use is permitted e.g. BLET instructors using the vehicle to attend a BLET conference.

\*\*\*\*Vehicles that are donated to colleges, and are to be used for instructional purposes, **may** also be titled to the State Board, issued State tags, and carried under the State Liability plan.

When the System Office receives the title and registration card, the title will be held in the System Office files and the registration card will be forwarded to the college. If you fail to title a vehicle correctly the first time, the college may have to pay the 3% highway use tax a second time when the title is corrected.

The college should list all state owned vehicles in the annual insurance survey conducted by the Department of Insurance. These vehicles will then be insured under the State's fleet liability policy and the college will be invoiced. The State's basic fleet liability insurance policy is only for liability insurance. If you wish to add collision and comprehensive insurance coverage, you should contact the insurance agent in writing with the vehicle information and start date of coverage. (See Agency Contacts page).

## RENTALS OR LEASES, LEASE-PURCHASES, INSTALLMENT-PURCHASES

### A. Definitions

#### 1. Lease or Rental Contracts

Contracts used to lease or rent items for a specific period of time with no intent to own the items or have a vested interest in the items, at the end of the contract period. Both lease and rental have the same general meaning. (Rent is usually for a short-term while a lease is usually for a longer term.)

#### 2. Lease-Purchase Contracts

Contracts used to lease or rent items for a specific period of time that includes or implies an option to purchase the item at the end of the contract period.

#### 3. Installment-Purchase Contracts

Contracts used to purchase items over a specific period of time, with title to the items going to the college at the end of the contract period.

### B. Guidelines and Procedures

#### 1. Lease or Rental Contracts

There is no reference in the General Statutes as to the procedures that community colleges should use to enter into lease or rental contracts. Given this lack of procedures, it is strongly recommended that each college establish its own written procedures for entering into lease or rental contracts and pattern those procedures after the same procedures for purchasing supplies, equipment, and materials. Community colleges do not have to seek the approval of P&C to enter into lease or rental contracts. Where P&C has a rental term contract, you are encouraged to use that contract.

#### 2. Lease-Purchase and Installment-Purchase Contracts

Community Colleges, under G.S. 115D-58.15, are authorized to enter into lease-purchase and installment-purchase contracts. **As with any purchase of goods, you must follow the purchasing procedures described by P&C or ITS.** For installment purchases, it is recommended that you seek a separate contract for the financing in order to secure the best financing rate.

It is important to remember that your local board of trustees must approve all contracts, and if the contract exceeds \$100,000 or three years, the following rules also apply:

- a. If the contract is for \$100,000 or less, or for three years or less, approval is not required from the State Board of Community Colleges (State Board) or your county commissioners.
- b. If **state** funds are used and the contract exceeds \$100,000 or three years, it must be approved by the State Board.

- c. If **local** funds are used and the contract exceeds \$100,000 or three years, it must be approved by your county commissioners in the form of a resolution. The commissioners must also acknowledge in writing that the college may require appropriations from them in order for the college to meet the obligations of the contract.
- d. If **local** funds are used and the contract is for \$500,000 or more, and for five years or more, it must be approved by both your county commissioners and the Department of State Treasurer, Local Government Commission.
- e. A college **shall not** have in effect at any one time more than five state-funded contracts which are permitted under this rule.
- f. No contract may contain a non-substitution clause that restricts the right of the trustees to:
  - 1. Continue to provide a service or activity, or
  - 2. Replace or provide a substitute for any property financed or purchased by the contract.
- g. It is recommended that each contract contain a non-appropriations clause similar to the following:

No deficiency judgment may be rendered against the board of trustees, the tax-levying authority, the State Board of Community Colleges, or the State of North Carolina in any action for breach of a contractual obligation under this contract. The taxing power of the tax-levying authority and the State is not pledged directly or indirectly to secure any monies due under this contract.

Contracts that must be approved by the State Board need to be submitted to the Administrative and Facility Services Section by the 15<sup>th</sup> of the month preceding the next regularly scheduled State Board meeting. To avoid delay in the award of a contract, you may submit for approval, contracts that are part of the bid package and will be used for financing.

Submission of these contracts in a timely manner is strongly recommended. By law, the State Board must approve these contracts before the college can execute the contract.

When contracts are submitted, the System Office staff will review them for conformity with the legislation and present those contracts conforming with the law to the State Board for approval. An annual report will be made to the State Board on the state-funded contracts exceeding \$100,000, or three-year terms, and the amount of state funds obligated for the next year.

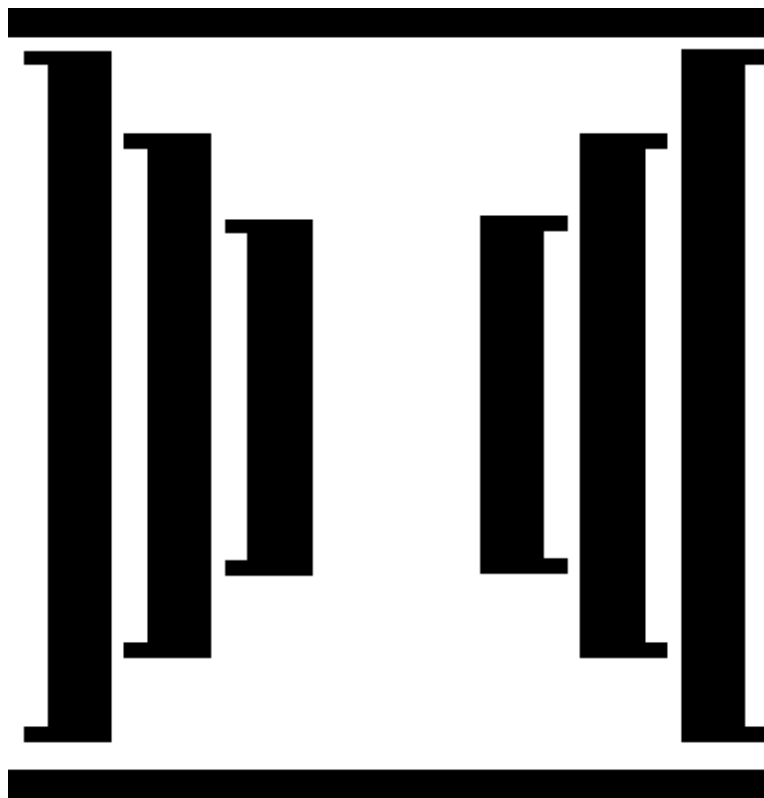
## **DONATED PROPERTY**

G.S. 115D -15 permits for the board of trustees to sell or lease real or personal property that has been donated to the college and to use the proceeds for educational purposes as specified by the donor. The procedures are as follows:

1. The State Board of Community Colleges (State Board) must approve the acquisition, by any means, of all real property.
2. Prior to a board of trustees accepting any donated real or personal property that has conditions as to how to use the proceeds from the sale or lease of the property, the college must submit to the Community College System Office, Administrative and Facility Services Section, a copy of the documents transferring the real or personal property.
3. The System Office staff will review the documents for compliance with the legislation and present those donations that meet the requirements of the legislation to the State Board for approval.
4. If approved by the State Board, the college may accept the donation of this real or personal property. If not approved by the State Board, the college cannot accept the donation of this real or personal property.
5. When a college intends to sell or lease any real property, regardless of whether it was donated or purchased, they must obtain State Board approval prior to selling the property.
6. The college shall follow the disposal methods authorized under Article 12 of Chapter 160A of the General Statutes to sell or lease any donated real or personal property that has conditions as to how to use the proceeds from the sale or lease of that property.
7. The college shall follow the disposal methods authorized under G.S. 115D-15(a) to sell or lease any real property that does not have conditions as to how to use the proceeds from the sale or lease of that property.
8. If a donation of real or personal property does not have any conditions as to how to use the proceeds from the sale or lease, the proceeds must be used for capital outlay purposes.

These statutes do not apply to donations made to a college's foundation and retained by the foundation. If the foundation subsequently transfers the donation to the college, the above procedures would have to be followed.

# ***INVENTORY***



## **SECTION B**

## EQUIPMENT INVENTORY PROCEDURES

This section contains information about procedures to be followed in placing equipment items into the central inventory file. Questions about matters not specifically included should be directed to the Assistant Manager for Administrative Services. It is the responsibility of each college to input data and make record changes at the local college. Instructions for this process are included in this section of the manual.

All records described in this section, as required for inventory purposes, are necessary to comply with standards established by the North Carolina Community College System Office, State Auditors Office, and the Division of Purchase and Contract.

### I. PURCHASE ORDER

- A. Inventory Number - A separate and unique inventory number for each equipment item costing \$1,000 or more, including accessories, purchased from state funds. (A ledger of consecutive inventory numbers, listing corresponding purchase order numbers and dates, must be maintained and made available for audit purposes.) Items costing less than \$1,000 which are subject to a high rate of theft, such as Computer's, DVD players, TV's, etc., **may** be maintained on the inventory records with a Fund Source Code of "9." Freight and sales tax is included as part of the item cost.
- B. Program code/Asset category - This is the code number corresponding to the area where equipment will be used. **Program Code/Asset Category is listed in Section E.**
- C. Capital Expense Object Number - Refer to the NCCCS Accounting Procedures Manual for a description of these numbers.
- D. Commodity Code number - This number should be used whenever possible. Commodity Code numbers are necessary for the input of data into the fixed assets module.
- E. Any other information that enhances the description of the item, such as manufacturer name, model number, dimensions, color, etc., should be included on the purchase order for inclusion in the fixed asset module.

### II. EQUIPMENT TRADE-IN

Before a college can make a final decision to trade-in used property **purchased from state funds**, the State Surplus Property Agency (Surplus Property) should be contacted for guidance and approval.

If a college solicits competition for the purchase of a new item with a trade-in, the solicitation showing the allowance offered should be directed to Surplus Property. Prior approval by Surplus Property is required (See Agency Contacts page).

The inventory number(s) of items traded-in and the trade-in allowance must be shown on the purchase order issued for the new or replacement item.

## EQUIPMENT INVENTORY PROCEDURES

Form NCCCS 4-11 (Request to Dispose of Capital Assets) should be prepared to remove items from the inventory. **Disposal Method** will be used to remove these items. (Please see important information on page 24 regarding the recording of trade – in allowance.)

### III. DONATED EQUIPMENT

Donated items of equipment which have a value of \$1,000 or more must be assigned an inventory number and placed on inventory.

### IV. INVOICES

Invoices should be legible and contain description, purchase order number and invoice prices.

### V. INVENTORY OF EQUIPMENT ACQUIRED THROUGH LEASE-PURCHASE

Items acquired through a lease-purchase plan will be entered into the inventory records at the date of acquisition for the total amount the item would have cost if it had been purchased outright. Interest and finance charges will not be a part of the cost. Subsequent invoices for the same item will not be included in subsequent monthly reports. In order to balance with the DCC 2-12, adjustments will have to be made on the Form NCCCS 4-20 (Adjustments to Inventory Figures).

### VI. SALES TAX

Sales tax paid to the N.C. Department of Revenue shall be added to the cost of the applicable fixed asset inventory number.

### VII. FREIGHT AND INSTALLATION

Invoices should include charges for freight and/or installation of an item to be added to equipment items. These charges must be added to the cost of the applicable fixed asset inventory numbers.

### VIII. INVENTORY ADJUSTMENTS

It is sometimes necessary for equipment expenditure amounts to be adjusted in order to balance with the monthly Form DCC 2-12. Among the reasons is the miscoding of expenditures, monthly lease-purchase payments, items sold without inventory numbers, journal entries for items paid in the month's work, etc. **The form NCCCS 4-20 will be used to report these adjustments and must be filed with the applicable month's work.**

## **VOCATIONAL EDUCATION ACT**

The VOCATIONAL EDUCATIONAL ACT provides federal funds that flow through the DCC 2-12. The expenditures will be shown on the DCC 2-12 in 53700- Educational Equipment Basic Grant Vocational Education (also referred to as Carl Perkins, Perkins, VOED, and Federal), 53600 - Tech Prep, and 53900 - Educational Equipment Priority Programs.

This equipment should be added to the equipment inventory records as Federal (fund source 3, federal reimbursement code 12).

## RECORD ENTRY, CHANGE, OR DELETION PROCEDURES

Items will be entered into, changed or deleted from inventory records by the local college.

### I. ENTRY OF RECORDS

All items of major equipment (items costing \$1,000 or more) purchased totally or in part from state funds must be entered into the inventory records, changed as necessary, and deleted when final disposition is made. **Equipment with a cost of less than \$1,000 is considered minor equipment and your institution has the discretion of using equipment or current operating funds for these purchases. Refer to the NCCCS Accounting Procedures Manual for further clarification.**

[http://www.ncccommunitycolleges.edu/Business\\_Finance/accountingProceduresManual.htm](http://www.ncccommunitycolleges.edu/Business_Finance/accountingProceduresManual.htm)

- A. **State equipment** - These are items purchased from the state capital outlay fund and entered into the records in Fund Source 1. The State Board of Community Colleges requires that items purchased from state funds, which cost \$1,000 or more, be placed on inventory.
- B. **State/Federal equipment** - These are items bought with a mixture of state and federal funds. These items must be carried on the state inventory with the state portion of funding recorded in Fund Source 1 and the portion paid from federal funds recorded in Fund Source 3.
- C. **Federal equipment** - These are items purchased totally from federal funds and are entered into the records in Fund Source 3.
- D. **Local equipment** - These are items purchased from local funds and are entered into the records in Fund Source 2 or Fund Source 0 (2 = County and 0 = Institutional).
- E. **Construction funds** - These items are purchased as a part of a construction project. They are items of movable equipment and are entered into the records in the same manner as other state equipment as Fund Source 4
- F. **Donated equipment** - These are items (equipment) donated to the college. These items should be recorded into the inventory records with the fair market value shown as the cost in Fund Source 6.

### IMPORTANT INFORMATION: **RECORDING TRADE-IN ALLOWANCE**

**For recording purchases for which you have a trade-in allowance, you must show the total value of the piece of equipment. For example, if the total cost of the equipment is \$5,000, and you pay \$3,000 and have a \$2,000 trade-in allowance, the item would be entered into the records reflecting \$3,000 in Fund Source 1 and \$2,000 in Fund Source 5.**

## RECORD ENTRY, CHANGE, OR DELETION PROCEDURES

### II. CHANGE TO RECORDS

Changes to existing inventory records are usually for the addition of information such as cost adjustment, manufacturer, serial number or location identifiers, change in location or program number, etc. A change does not alter the basic description of an item nor delete the item from the active records. Changes are transactions that result in a better or more accurate description of an existing item. Cost adjustments are processed depending on the cost of the item:

#### ◆ Under \$5000

#### ASST – Fixed Asset Maintenance

#### ACQM – Acquisition Information Maintenance

If the addition occurs in a different month, key the additional information into the second line of the Fund Source line. Once the information is keyed, the Acquisition Cost will reflect the addition.

- ◆ Over \$5000 and not fully depreciated  
**FXCA** and **ASST**

**FXCA** - Fixed Asset Cost Adjustment. If the item is fully depreciated, then the cost adjustment should be processed through ASST.

**Datatel - SO6-NCCCS-COLDEV - CF**

File Edit Favorites Tools Help

Quick Access: FXCA Go

FXCA-Fixed Assets Cost Adjustment

Fixed Assets ID: 100077

Acquisition Cost	47,000.00	New Cost	47,000.00
Total Amount of Renewals	0.00	New Amt	0.00
Accumulated Depreciation	4,500.00		
Current Book Value	42,500.00	New Book Value	42,500.00
Salvage Value	0.00	New Sal Value	0.00

Adjustment to Acquis Cost

Adjustment to Renewals

Adjustment to Salvage Value

Requested By

Reason for Adjustment

Date to post transaction 10/20/05

## ASST – Fixed Asset Maintenance

**Datatel - SO6-NCCCS-COLDEV - CF**

File Edit Favorites Tools Help

Quick Access: ASST Go

ASST Fixed Asset Maintenance

Fixed Asset ID: 104045 Item Cost: 1629.36

Capitalize No Asset Acct

Asset Type: EGP Equipment

Asset Category: 0042 Data Processing Lab

Description: COMPUTER

Building: B01 Block 1

Sector: CH Class Room

Room: 88043

Location: Project ID: 1 Pct.

Department: Vendor

Manufacturer: Voucher

Model: MOD IV 64K

Serial Number: P.O. No

Steward: Asset Bldg

Acquis Method: PR Purchase

Leave ID: 12/15/2001

Restrictions: 09/24/03

Insurance ID: 06/14/04

Acquis Info: 12/15/2001

Other Info: 09/24/03

Disposal Info: 06/14/04

Detail into the Acquisition Info screen to add the additional amount.

## ACQM – Acquisition Information Maintenance

Fixed Asset ID: 104046      COMPUTER

Capitalize: No  
 Acquisition Date: 12/15/2001  
 Acquisition Cost: 1,629.38  
 Salvage Value:   
 Useful Life:   
 Depreciation Method:   
 Declining Balance %:   
 Depreciation Expense Acct:   
 Depreciation Acct Desc:

Fund Source	Amount	Date	Acq/Cost Change	Fed Reim Code
1 States 2-12	1629.38			
<b>Total</b>	<b>1629.38</b>			

Asset Valuation:   
 Renewals:   
 Depreciation:

Controller:      Adding Value 2

If the addition occurs in a different month, key the additional information into the second line of the Fund Source line. Once the information is keyed, the Acquisition Cost will reflect the addition.

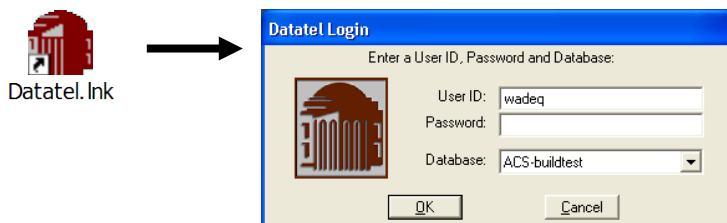
### III. DELETION OF INVENTORY RECORDS

- A. Form NCCCS 4-11 (Request to Dispose of Capital Assets) should be prepared when deleting an inventory record. The chief business officer should approve and sign the forms prior to deleting any asset from the inventory record. It is recommended that a separate NCCCS 4-11 be prepared for each category of deletion e.g. sold, lost/stolen, cannibalized, etc. This will enable you to more readily account for each category at the fiscal year end.
- B. Actions resulting in deletions are transfers, sale, cannibalization, loss/stolen, and trade-ins. See the Transfer and Disposal Section of this manual for an explanation of methods used to make deletions.

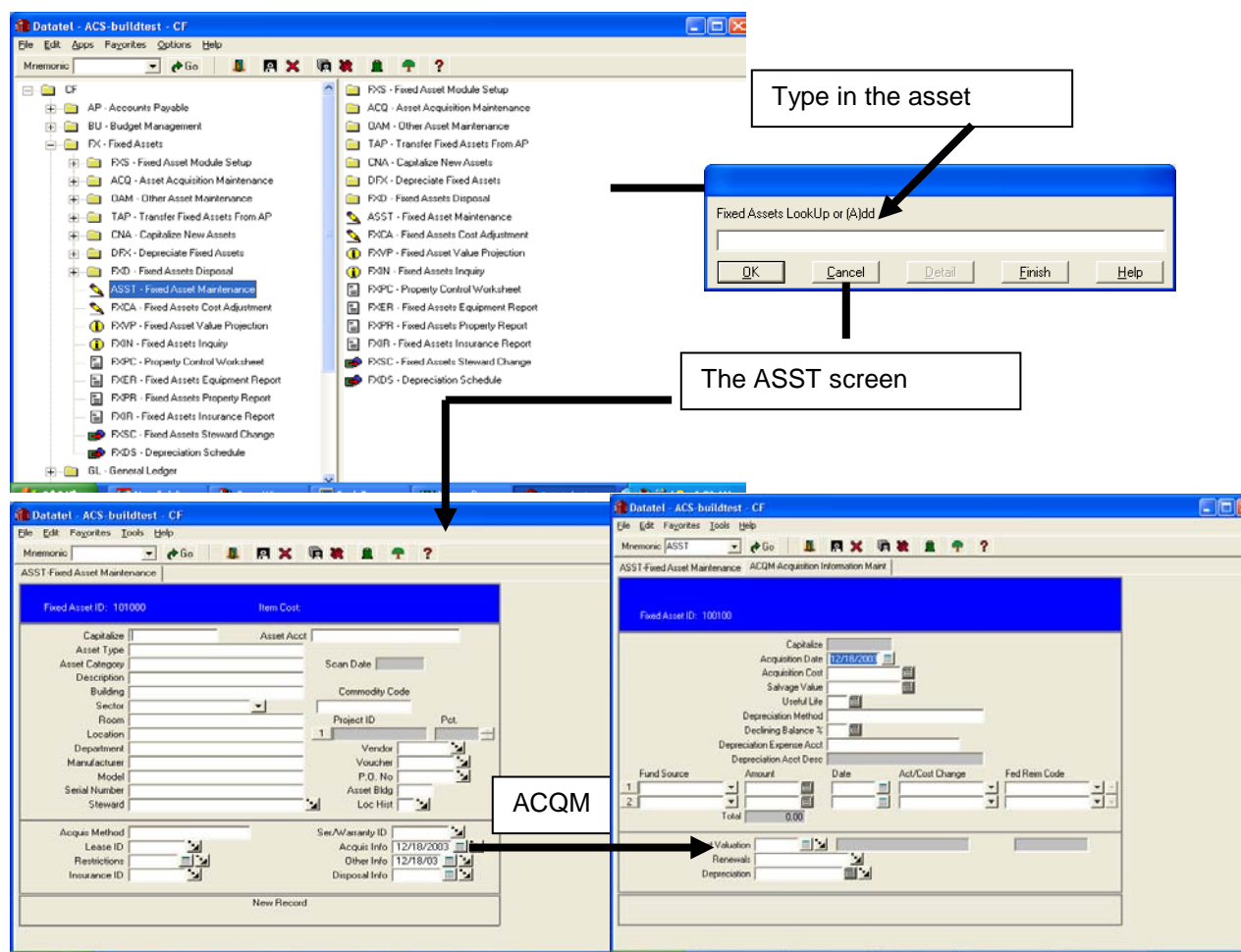
## INVENTORY MAINTENANCE

This section of the manual is used to explain and demonstrate procedures to be used for entering, changing or deleting records, as well as available forms and inventory maintenance options. **Please refer to the CIS Training documentation for detailed information.**

Click on the Datatel Icon and log into the system.



Double click on the Mnemonic. ASST.



**ASST displays the fixed asset screen. These are the screens used to add, change, update, or dispose of fixed assets from the inventory system.**

## INVENTORY MAINTENANCE

Inventory screen with item costing \$1000.00 - \$4999.99

**Datatel - ACS-buildtest - CF**

File Edit Favorites Tools Help

Mnemonic: ASST Go

ASST-Fixed Asset Maintenance

Fixed Asset ID: 106700 Item Cost: 1500.00

Capitalize: No Asset Acct: [ ]

Asset Type: EQP Equipment

Asset Category: 0268 Computer Center

Description: Computer

Building: 001 White Bldg

Sector: 120 HEFC Building

Room: 001 Business Office

Location: [ ]

Department: 2526 Information Systems

Manufacturer: 5252

Model: 1234

Serial Number: 5252dddd

Steward: [ ]

Scan Date: [ ]

Commodity Code: [ ]

Project ID: 1 Pct: [ ]

Vendor: [ ]

Voucher: [ ]

P.O. No: [ ]

Asset Bldg: [ ]

Loc Hist: [X] [ ]

Acquis Method: PR Purchase

Lease ID: [ ]

Restrictions: [ ]

Insurance ID: [ ]

Ser/Warranty ID: [ ]

Acquis Info: 02/24/2004

Other Info: 02/24/04

Disposal Info: 04/12/04

A question concerning a particular screen or field, the question mark icon provides helpful information.

**Datatel - ACS-buildtest - CF**

File Edit Favorites Tools Help

Mnemonic: ASST Go

ASST-Fixed Asset Maintenance ACQM-Acquisition Information Maint

Fixed Asset ID: 106700 Computer

Capitalize: No

Acquisition Date: 02/24/2004

Acquisition Cost: 1,500.00

Salvage Value: [ ]

Useful Life: [ ]

Depreciation Method: [ ]

Declining Balance %: [ ]

Depreciation Expense Acct: [ ]

Depreciation Acct Desc: [ ]

Fund Source: 1 States 2-12 Amount: 1500.00 Date: 02/24/04 Act/Cost Change: 1 New Fed Reim Code: [ ]

2 [ ] Total: 1500.00

Asset Valuation: [ ]

Renewals: [ ]

Depreciation: [ ]

The system does not require this field to be populated, but it is a required field in order for the items to appear on the Fund Source Report.

## INVENTORY MAINTENANCE

Field by Field description

### **ASST – Fixed Asset Maintenance**

**Capitalize:** An entry of "Y" or "N" determines whether an asset is to be capitalized and depreciated. Y (Yes): The asset is to be capitalized and depreciated. If you enter "Y," you are then prompted for a general ledger account number. **Items costing over \$5000 must be capitalized.**

**Asset Type:** The asset type is a lookup field. These codes should be loaded in the file. The asset type should mirror the actual item. (Ex. - Equipment purchased with state funds would have an asset type of EQP, equipment purchased from county/local funds would have an asset type of EQPC.)

**Asset Category:** The asset category is a lookup field and is the program in which the equipment is located. (Ex. - Dental chair would be located in 045 – Dental Lab.)

**Description:** Brief description of item.

**Building:** Enter the building the item is physically located.

**Room:** Enter the room the item is physically located.

**Location:** Enter specific location of item. (Ex. - Located on top shelf in closet.)

\*\*\*Optional field\*\*\*

**Department:** Enter the department in which the item is located.  
(Ex. - Dental chair is in 4524, Dental Assisting.) \*\*\*Optional field\*\*\*

**Manufacturer:** The company that manufactures the item.

**Model:** Model number of item.

**Serial Number:** Serial number of item.

**Steward:** Individual in charge of item. \*\*\*Optional field\*\*\*

**Acquisition Method:** Enter a code to indicate the manner in which the item was acquired.  
(See page 43.)

**Acquisition Info:** Enter the date the asset was acquired. Click the **Detail Arrow** to enter additional information for the asset on the **ACQM – Acquisition Information Maint.** screen.

## INVENTORY MAINTENANCE

Field by Field description (con't)

### **ACQM – Acquisition Information Maintenance**

**Acquisition Date:** The default date is automatically entered. You can accept the default or enter another date in MM/DD/YYYY format.

**Fund Source:** Enter the fund source the item was purchased from. **(See page 43.)**

**Amount:** Enter the cost of the item. (The cost should include any taxes or shipping/freight charges associated with the item.)

**Date:** This field should match the Acquisition Date.

**Action/Cost Change:** Enter the appropriate action code for the item by clicking on the small arrow to the left of the field. New records should have a code of 1 – New.

## INVENTORY MAINTENANCE

Inventory screen with item costing > \$5000.00  
 = Represents additional information needed.

**Datatel - ACS-buildtest - CF**

File Edit Favorites Tools Help

Mnemonic ASST Go

ASST-Fixed Asset Maintenance

Fixed Asset ID: 107100 Item Cost:

Capitalize Yes Asset Acct 07-960-00-181000-00000

Asset Type Equip Equipment

Asset Category 0084 Furniture Design Lab

Description Administrative Desk

Building 001 White Bldg

Sector 120 HEFC Building

Room 001 Business Office

Location

Department

Manufacturer Miller

Model 85200

Serial Number 56987456666

Steward

Commodity Code

Project ID Pct.

Vendor

Voucher

P.O. No

Asset Bldg

Loc Hist

Acquis Method PR Purchase

Lease ID

Restrictions

Insurance ID

Ser/Warranty ID

Acquis Info 07/21/2004

Other Info 07/21/04

Disposal Info

Insurance LookUp or (A)dd New Record

**Datatel - ACS-buildtest - CF**

File Edit Favorites Tools Help

Mnemonic ASST Go

ASST-Fixed Asset Maintenance ACQM-Acquisition Information Maint

Fixed Asset ID: 107100 Administrative Desk

Capitalization Yes

Acquisition Date 07/21/2004

Acquisition Cost 6500.00

Salvage Value 0.00

Useful Life 15

Depreciation Method SL Straight Line

Declining Balance %

Depreciation Expense Acct 07-960-00-539510-30110

Depreciation Acct Desc Depreciation Expense : Purchas

Fund Source Amount Date Asset Cost Change Fed

1 1 States 2-12 6500.00 07/21/20 1 New

2

Total 6500.00

Asset Valuation

Renewals

Depreciation

Element Value 1/1

Refer to the Asset Policy with Useful Lives and Capitalization Limits

## **INVENTORY MAINTENANCE**

Additional Fields for items over \$5000

### **ASST – Fixed Asset Maintenance**

**Capitalize:** Enter **Y** if this asset should be capitalized (greater than \$5000.)

**Asset Acct:** Enter the GL account number associated with this asset or use the LookUp option to access the resolution screen.

### **ACQM – Acquisition Information Maintenance**

**(Refer to the Asset Policy with Useful Lives and Capitalization Limits)**

**Salvage Value:** Enter “0” for the salvage value amount.

**Useful Life:** Enter the expected useful life of the asset, in years.

**Depreciation Method:** Enter **SL** (Straight Line). Straight Line is the only method set up for use at this time.

**Depreciation Expense Account:** Enter the account number or use the LookUp option to access the resolution screen.

## Asset Policy with Useful Lives and Capitalization Limits March 2007

### Guidelines:

The following depreciation methods, capitalization limits, and useful lives are established for each major class of asset. Periodically, the estimated useful lives of depreciable capital assets should be re-evaluated for reasonableness. **An estimated useful life is not reasonable if the associated capital asset is near full depreciation but will remain in use significantly longer than originally estimated.** A change in the estimated useful life of a capital asset is considered a change in accounting estimate, which must be accounted for prospectively (i.e., the change is accounted for and reported in current and future periods).

Because depreciation is intended to allocate the cost of a capital asset over its entire useful life, it normally is not appropriate to report assets still in service as fully depreciated. However, because differences may occur between estimated useful lives used for depreciation computations and actual useful lives, colleges may, in limited cases, report capital assets that are fully depreciated, but only if such balances are immaterial. If the balances of fully depreciated capital assets that remain in use are material, the related estimated useful lives should be changed and the beginning accumulated depreciation balances should be restated.

**Land and Non-Depreciable Land Improvements** – *All land and non-depreciable land improvements will be capitalized, regardless of cost. Non-depreciable land improvements produce permanent benefits, primarily related to preparing land for its intended use.*

Non-Depreciable Land Improvements:

- Excavation Costs
- Fill and Grading Costs

**Infrastructure Assets** – *long-lived capital assets that normally are stationary and normally can be preserved a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams, and lighting systems. Depreciable land improvements are enhancements made to land, excluding the clearing and grading necessary to make the land suitable for use. Examples: fences and gates, seating/bleachers, parking lots, parking barriers, swimming pools, tennis courts, yard lighting, paths, septic tanks, fountains, retaining walls, athletic fields, golf courses, harvest crops, or similar improvements that rest in or on the land itself.*

- Depreciation method – straight-line; no salvage value; half-year convention.
- Capitalization threshold – \$5,000
- Infrastructure assets will be reported under “Capital Assets, net” on the Statement of Net Assets.

*Useful Lives:*

- Roads – 75 years
- Bridges – 75 years
- Tunnels – 75 years
- Drainage Systems – 75 years
- Water and Sewer Systems – 75 years
- Dams – 75 years

- Lighting Systems (including supports and wiring) – 75 years
- Fencing – 50 years
- Landscaping – 50 years
- Lighting – 50 years
- Parking Lots – 50 years
- Other Land Improvements – 50 years

**Buildings and Improvements** – Buildings are roofed structures used for permanent or temporary shelter of persons, animals, plants, or equipment. Buildings consist of two components: original construction and renovations. Original construction is the cost of the building and all the detailed components and services necessary to bring the building on line. Renovations are those subsequent construction projects, other than repairs, that add value to the building, or extend its useful life, but do not add to the usable space of the structure. An addition includes projects undertaken after the original construction whenever those latter projects add additional square footage to the original building. Renovations and additions that add to the usable space, prepare existing buildings for new uses, or extend the useful life of an existing building should be capitalized. Construction in Progress is not depreciated.

- Depreciation method – straight-line; no salvage value; half-year convention
- Useful life for all buildings, additions and renovations is 50 years
- **When a building is improved, the improvement must be capitalized as a separate asset from the original building and assigned its own useful life.**
- Report leasehold improvements (capitalizable improvements to leased buildings) in this category. Depreciate the leasehold improvement over the life of the improvement or the lease term, whichever is shorter.
- Capitalization threshold – \$5,000

#### **Vehicles**

- Depreciation method – straight-line; no salvage value; half-year convention
- Capitalization threshold – \$5,000
- Useful life – 15 years

#### **Machinery, Equipment, and Furniture**

- Depreciation method – straight-line; no salvage value; half-year convention.
- Capitalization threshold – \$5,000
- Include machinery, equipment and furniture in classrooms, shops, laboratories and offices.

#### **Useful lives:**

- Data Processing/Computer Equipment – 5 years
- All Other Furniture and Equipment – 25 years

**Library Materials** – *books, journals, bound periodicals, microfilm, and other media purchased for and catalogued in libraries. The Office of the State Controller has directed all colleges to expense library books and other library materials in the year of acquisition.*

**Art, Literature and Artifacts** – Individual artwork, museum pieces, rare books, historical treasures and other artifacts will be capitalized if they meet the capitalization threshold of \$5,000. Inexhaustible items will not be depreciated. Exhaustible items whose useful lives are diminished by display, educational or research applications will be depreciated using the

straight-line method with the half-year convention. Individual colleges will determine useful lives and salvage value based on the particular asset(s).

**Intangible Assets** – *assets that benefit the college through the special rights and privileges of their ownership as opposed to physical characteristics. Examples are patents, copyrights, leases licenses and right of way easements.*

**Computer Software** – *Agreements to use software that expire each year and are renewed on an annual basis should be expensed and not capitalized. Generally, all software should be expensed and not capitalized for financial reporting.*

*However, NACUBO Advisory report 1999-7 became effective 7/1/99 (not retroactively) adopting AICPA SOP 98-1, which requires the capitalization of the costs of developing or purchasing computer software for internal use. The Office of State Controller further qualifies that requirement to capitalize only that software significant to separately issued financial statements. Capitalize only direct costs of materials and services, payroll and payroll-related costs, and interest costs incurred during development. Upgrades and enhancements should be capitalized only to the extent that they increase the functionality of the product. Costs related to the preliminary project stage, training, and data conversion should be expensed as incurred.*

- Depreciation method – straight-line; no salvage value; half-year convention
- Capitalization threshold – \$5,000
- Useful Life should be determined by the expected functionality of the software.

**Trademarks and Patents** – useful lives will be based on type of intangible asset or life of related contract.

## INVENTORY MAINTENANCE

### TAP – Transfer Fixed Assets from AP

A second option for adding new items to inventory each month is using TAP – Transfer Fixed Assets from AP. In order for this process to work, users must flag an item as a Fixed Asset. Flagging an item as a fixed asset may be accomplished on anyone of the following screens: REQM – Requisition Maintenance, POEM – Purchase Order Maintenance, or VOUM – Voucher Maintenance.

The screenshot shows the 'REQM-Requisition Maintenance' window. The 'Fixed Asset' dropdown menu is highlighted with a circle. The options are 'S Single' and 'M Multivalued'. An arrow points from the text 'Single = One item being ordered to be placed on inventory.' to the 'S Single' option. Another arrow points from the text 'Multivalued = More than one item being ordered and all the items to be placed on inventory. (Ex. 25 computers)' to the 'M Multivalued' option.

Users have the option to choose Single or Multivalued.

Single = One item being ordered to be placed on inventory.

Multivalued = More than one item being ordered and all the items to be placed on inventory. (Ex. 25 computers)

**\*\*\*\* The TAP process should be done immediately after each check run. \*\*\*\***

The screenshot shows the 'Datatel - SO6-coldev - CF' application menu. The 'FX - Fixed Assets' folder is expanded, showing the following items: FXS - Fixed Asset Module Setup, ACQ - Asset Acquisition Maintenance, OAM - Other Asset Maintenance, TAP - Transfer Fixed Assets From AP, CNA - Capitalize New Assets, DFX - Depreciate Fixed Assets, FXD - Fixed Assets Disposal, ASST - Fixed Asset Maintenance, FXCA - Fixed Assets Cost Adjustment, FXVP - Fixed Asset Value Projection, FXIN - Fixed Assets Inquiry, FXPC - Property Control Worksheet, FXER - Fixed Assets Equipment Report, FXPR - Fixed Assets Property Report, and FXIR - Fixed Assets Insurance Report. The 'TAP - Transfer Fixed Assets From AP' item is highlighted.

The mnemonics must be processed in the following order.

1. FXTR
2. FXAP
3. FAIL

## INVENTORY MAINTENANCE TAP – Transfer Fixed Assets from AP

### FXTR – Fixed Asset Transfer Report

The screenshot shows the 'Datatel - S06-coldev - CF' window with the 'FXTR-Fixed Assets Transfer Report' tab selected. The form includes a status bar at the top indicating 'Status: Batched', 'Operator: Wade Quinn', and '06/08/05 10:18'. Below this, there are input fields for 'Ranges' (Begin and End) and 'Non-Range Values' (Vendors Incl and Vendors Excl). A 'Voucher LookUp' button is located at the bottom left of the form area.

FXTR will show the items that were flagged and vouchered for a particular month or a check run.

The screenshot shows the 'Report Browser' window displaying the 'Fixed Assets Transfer Report'. The report header includes the date 'June 17 2005' and time '15:43'. The report content is a table with the following columns: Item Description, Voucher, Vou Date, Vendor, PO No, and Sing. The data row shows a 'Desktop PC' with Voucher 'V0000349', Vou Date '06/17/05', Vendor 'Tutorial Supplies Center', PO No 'P0000158', and Sing 'Sing'.

Item Description	Voucher	Vou Date	Vendor	PO No	Sing
Desktop PC	V0000349	06/17/05	Tutorial Supplies Center	P0000158	Sing

The report will show the flagged items with voucher #, voucher date, vendor, PO# and the flag status of single or multivalued.

## INVENTORY MAINTENANCE TAP – Transfer Fixed Assets from AP

### FXAP – Fixed Assets – AP Interface

Datatel - SO6-coldev - CF

File Edit Favorites Tools Help

Mnemonic: VOUM Go

FXAP-Fixed Assets - AP Interface

Status: Ready to Batch Operator: Wade Quinn 06/17/05 15:43

Batch ID

Batch Description

The System requires the user to create a Batch ID and Batch Description. The ID and description may be anything they wish.

Ex. Batch ID = "061705"

The number represents the current date the batch is created.

Batch Description = "June Transfer".

Report Browser

1/1

1 batch has been created.  
The first one is 061705\_1.  
Use FAIL to make fixed assets out of the line item information.

The report identifies that one batch has been created with the number.

## INVENTORY MAINTENANCE TAP – Transfer Fixed Assets from AP

### FAIL – AP Interface List

Batch ID: 060805\_1

Fixed Asset ID	Line Item Description	Voucher	Date	Price	Transfer
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No

Controller Items Value 1/24

Use the FAIL screen to transfer line item information from vouchers created in the Accounts Payable module to the Fixed Assets module.

**Fixed Assets Batch LookUp** – Enter the code for a fixed assets batch, or use a LookUp option to access the resolution screen.

Batch ID: 060805\_1

Fixed Asset ID	Line Item Description	Voucher	Date	Price	Transfer
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No
	pc	V0000328	06/08/05	1,070.00	No

Controller Items Value 1/24

**Fixed Asset ID** - Enter **A** in a Fixed Asset ID field to add a new fixed asset ID number.

Enter new fixed asset ID

Enter a **Fixed Asset ID** number.  
Click **OK**.

## INVENTORY MAINTENANCE TAP – Transfer Fixed Assets from AP

The **ASST – Fixed Asset Maintenance** screen appears with the cursor in the **Capitalize** field.

**Datatel - SO6-NCCCS-COLDEV - CF**

File Edit Favorites Tools Help

Mnemonic: XEPS Go

FAIL-FX - AP Interface List ASST-Fixed Asset Maintenance

Fixed Asset ID: 106821 Item Cost: 1070.00

Capitalize  Asset Acct

Asset Type

Asset Category

Description: pc

Building

Sector

Room

Location

Department

Manufacturer

Model

Serial Number

Steward

Scan Date

Commodity Code

Project ID  Pct.

Vendor: 0075425

Voucher: V0000328

P.O. No: P0000157

Asset Bldg

Loc Hist

Acquis Method: PR Purchase

Ser/Warranty ID

Lease ID

Acquis Info: 06/08/2005

From here, users should fill in the appropriate fields.

Once this is complete,

Click **Save**.

The **Update/Cancel/Return** dialog box appears

Click **Update**.

The **FAIL Batch ID** screen appears

**Datatel - SO6-NCCCS-COLDEV - CF**

File Edit Favorites Tools Help

Mnemonic: XEPS Go

FAIL-FX - AP Interface List

Batch ID: 060805\_1

Fixed Asset ID	Line Item Description	Voucher	Date	Price	Transfer
1	pc	V0000328	06/08/05	1,070.00	No
2	pc	V0000328	06/08/05	1,070.00	No
3	pc	V0000328	06/08/05	1,070.00	No
4	pc	V0000328	06/08/05	1,070.00	No
5	pc	V0000328	06/08/05	1,070.00	No
6	pc	V0000328	06/08/05	1,070.00	No
7	pc	V0000328	06/08/05	1,070.00	No
8	pc	V0000328	06/08/05	1,070.00	No

Controller Items Value 1/24

## INVENTORY MAINTENANCE

### A. Reasons for action / cost changes:

1. New
2. Sales Tax
3. Freight
4. Installation
5. Accessories
6. Other

### B. Acquisition Methods

PR - Purchase  
LP - Lease/Purchase  
LR - Lease/Rental  
TR - Transfer  
DO - Donated

### C. Fund Sources:

- 0 - Equipment purchased with **institutional** funds
- 1 - Equipment purchased with **state** funds
- 2 - Equipment purchased with **county** funds
- 3 - Equipment purchased with **federal** funds
- 4 - Equipment purchased with **construction** funds
- 5 - Equipment purchased with **state** funds  
**(not reflected in current months work)**
- 6 - Equipment **donated**
- 9 - **Minor** equipment – Equipment with a **cost value < \$1,000**

### D. Disposal Methods:

CB - Cannibalized  
LS - Lost/Stolen  
SD - Sold  
TI - Trade-in  
TR - Transferred

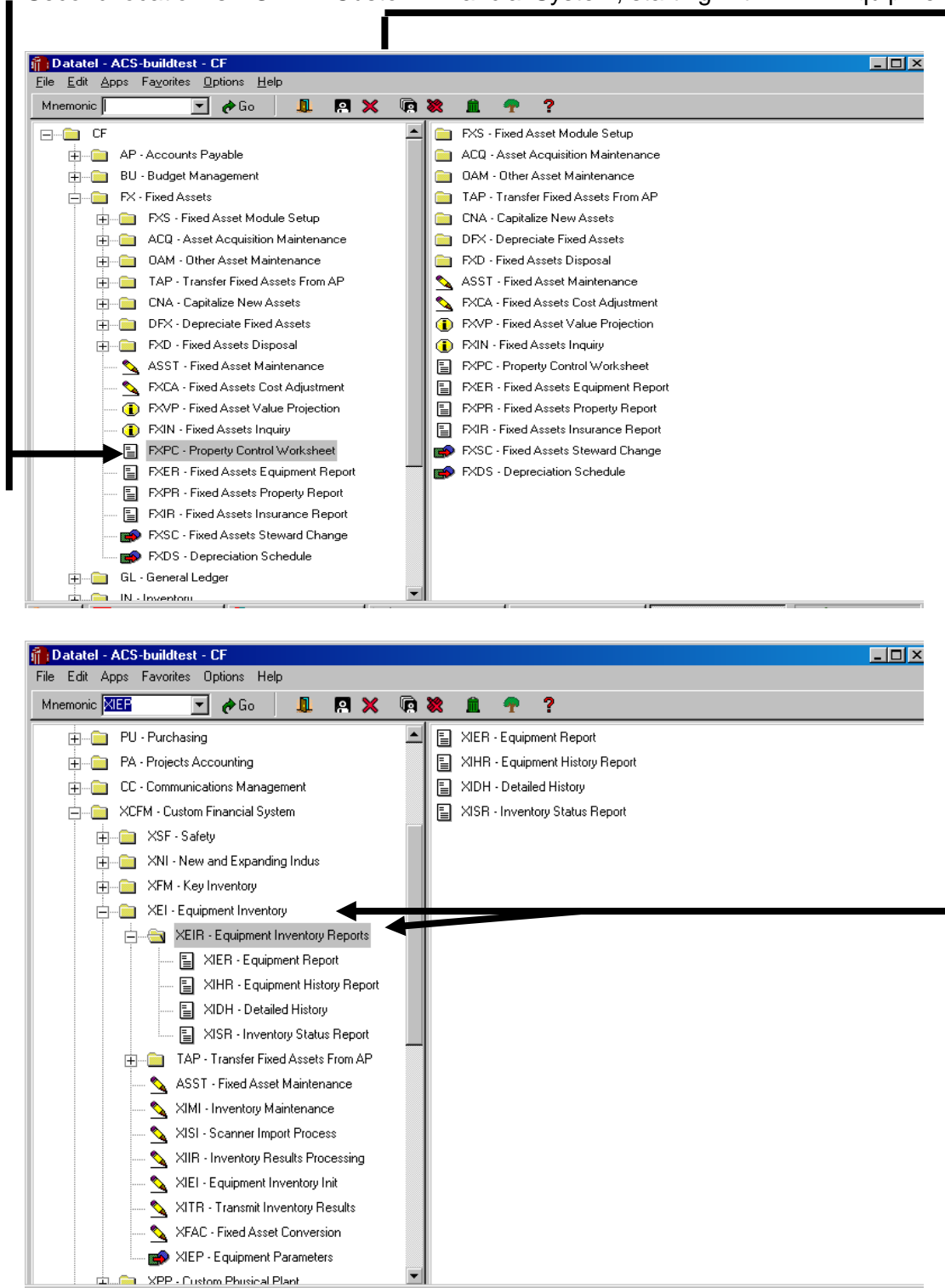
#### \*\*\*\*Important Notes regarding Fund Source:

**Fund Source “1”:** used when the cost amount is being reflected on the current month's state 2-12 work.

**Fund Source “5”:** used when the cost amount is included in a previous month's 2-12 work. (example: Correcting a price problem that occurred several months ago, or when placing an item back on the inventory after being removed for some reason).

## PRINTING REPORTS

Two locations exist for printing reports. The first is FX - Fixed Assets, starting with **FXPC**. Second location is **XCFCM** – Custom Financial System, starting with **XEI** – Equipment Inventory.



## PRINTING REPORTS

**XIER** – Equipment Report allows users to print a multitude of reports. Users have the option to print six different report styles: Fund Source, Department, Building, Asset Category, Commodity Code, and Fixed Asset ID.

Report of items added to the inventory records in a specific date period.

**This report should be printed at the end of each fiscal year using start date, 07/01/xx with the ending date 06/30/xx. This will show additions for the fiscal year and can be used in reconciling your fixed assets.**

Acquis Start Date: 07/01/03      Acquis End Date: 06/30/04

Disposal Start Date:      Disposal End Date:     

Acquis Cost Min:      Acquis Cost Max:     

Disposal Cost Min:      Disposal Cost Max:     

Current Cost Min:      Current Cost Max:     

Report Style: AI

Valid Statuses: 1, 2

Show Active Equip: ☒ Y

Addnl Sel Criteria: Yes

To show all active equipment (that has not been disposed) "Y" should allow be populated in the field.

Bldg	Room	Item No	Description	Manufactur	Serial No	Acq Cost	Acq Date	Dis Cos
MNT Pitt's	01	102201	pc	Dell	1rtre65123	1070.00	06/08/05	
DGWD Dogwo	101	105700	Crown Victoria	Ford	1faf2vw259	21000.00	02/17/05	
Total:		2				22070.00		0.0

## PRINTING REPORTS

Report that shows entire inventory in numerical sequence and shows the cost of each item by the source of funds it was purchased with. It also shows the total value of each fund source and total number of items on your inventory records.

**This report must be printed at the end of each fiscal year using only an Acquisition End date of 06/30/xx and forwarded to the System Office no later than August 1st.**

Datatel - SO6-colddev - CF

File Edit Favorites Tools Help

Mnemonic: XIER

XIER-Equipment Report

Acquis Start Date: [ ] Acquis End Date: 06/30/05

Disposal Start Date: [ ] Disposal End Date: [ ]

Acquis Cost Min: [ ] Acquis Cost Max: [ ]

Disposal Cost Min: [ ] Disposal Cost Max: [ ]

Current Cost Min: [ ] Current Cost Max: [ ]

Report Style: FS (Fund Source Report)

Valid Statuses: 1, 2

Show Active Equip: Y

Addnl Sel Criteria: No

Report Browser

June 14, 2005

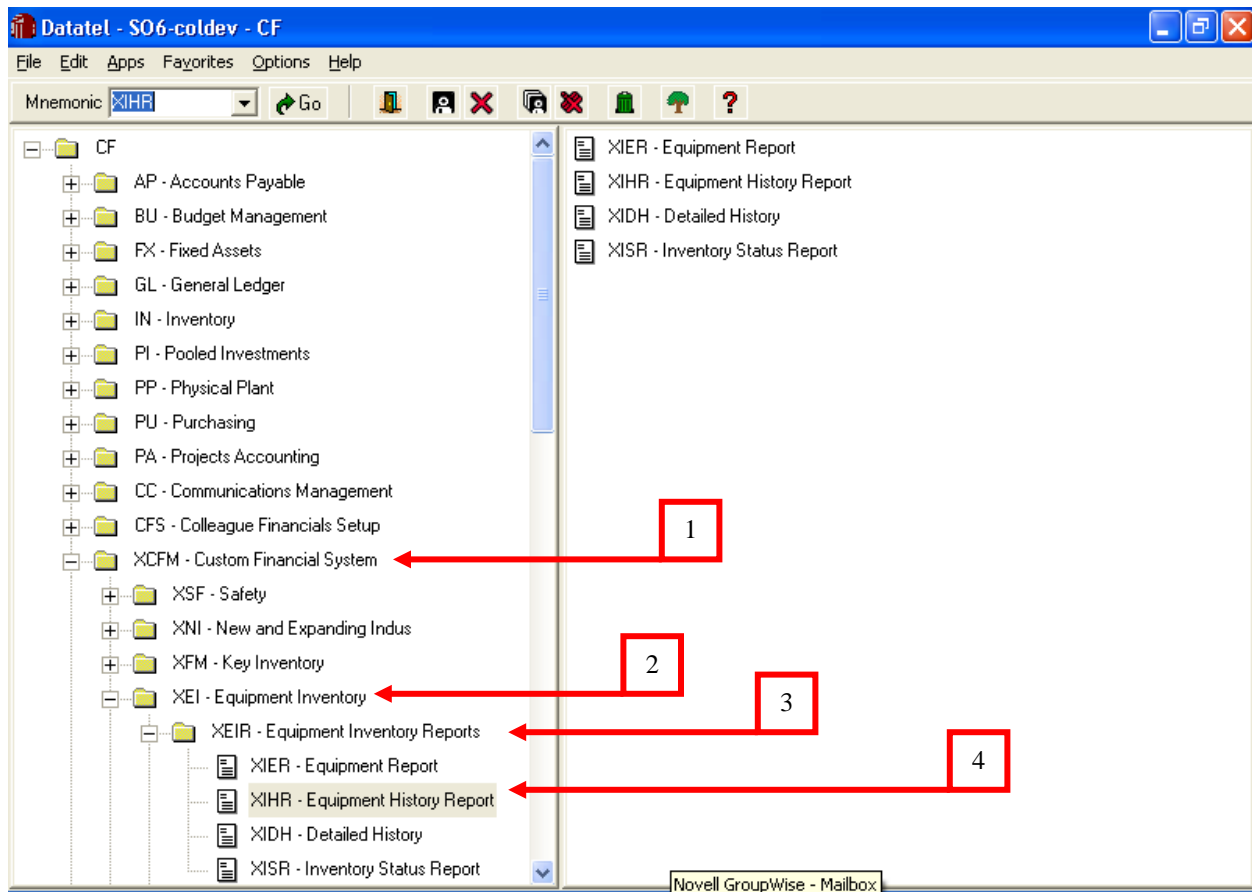
Equipment Fund Source Report

Asset ID	Description	Fund Src 0	Fund Src 1	Fund Src 2	Fund Src 3	Fund Src 4	Fund Src 6
000058	LAB SCIENCE PR	0.00	2295.00	0.00	0.00	0.00	0.00
000101	TEST	0.00	9999999.99	0.00	0.00	0.00	0.00
000102	TEST	0.00	9999999.99	0.00	0.00	0.00	0.00
001319	CONSOLE COPIER	0.00	1050.00	0.00	0.00	0.00	0.00
100076	this one	0.00	2500.00	0.00	0.00	0.00	0.00
100078	LINCOLN CONTINENTAL	0.00	35000.00	0.00	0.00	0.00	0.00
100320	ECONOMY STRETC	0.00	0.00	0.00	0.00	0.00	0.00
102201	pc	0.00	1070.00	0.00	0.00	0.00	0.00
104014	DISKETTE DRIVE	0.00	1893.02	0.00	0.00	0.00	0.00
104045	COMPUTER,	0.00	1629.39	0.00	0.00	0.00	0.00
104396	BRAKE, 4 FT.	0.00	1567.50	0.00	0.00	0.00	0.00
104976	MEMORYWRITER	0.00	2664.76	0.00	0.00	0.00	0.00
105130	PAPER SHREDDER	0.00	1785.00	0.00	0.00	0.00	0.00
105183	PC/XT SYST. UN	0.00	1782.59	0.00	0.00	0.00	0.00
105316	UPS SYSTEM,	0.00	14505.75	0.00	0.00	0.00	0.00
105460	JET PRINTER	0.00	1974.05	0.00	0.00	0.00	0.00
105490	HEAT PUMP	0.00	1650.00	0.00	0.00	0.00	0.00
105530	PS/2	0.00	1213.80	0.00	0.00	0.00	0.00
105629	CABINET	0.00	4347.00	0.00	0.00	0.00	0.00
105659	COPIER/DUPLICA	0.00	22192.60	0.00	0.00	0.00	0.00
105700	Crown Victoria	0.00	21000.00	0.00	0.00	0.00	0.00
105722	FOLDING MACH.	0.00	2047.50	0.00	0.00	0.00	0.00

## MONTHLY TRANSACTION PROCESS

Once all the equipment purchased has been entered and AP has processed all checks for the month, the following process must be completed:

- 1 - Select **XCFM** – Custom Financial System.
- 2 - Select **XEI** – Equipment Inventory
- 3 - Select **XEIR** – Equipment Inventory Reports
- 4 - Select **XIHR** – Equipment History Report. (Monthly Audit)



**XIHR – Equipment History Report (Monthly Audit)** - The system will run a report that compares monthly equipment transactions (data you have entered) to the equipment expenditures on the DCC 2-12 (G/L Summary File). The operator is prompted to enter the following information:

The screenshot shows a web-based application window titled "Datatel - SO6-coldev - CF". The menu bar includes "File", "Edit", "Favorites", "Tools", and "Help". Below the menu bar is a toolbar with icons for "Go", "Print", "Cancel", "Refresh", "Save", "Help", and "Exit". The main content area is titled "XIHR-Equipment History Report" and contains the following form fields:

- Mnemonic:** A dropdown menu with "XIHR" selected.
- Transaction Start Date:** A date field with a calendar icon, showing "06/01/05".
- Transaction End Date:** A date field with a calendar icon, showing "06/30/05".
- Fund Sources:** Three rows, each with a dropdown menu and a plus/minus button. The first row shows "1" in the dropdown.
- Items W/O Bid:** A text input field.
- J/E to State 112:** A text input field.
- Misc Adjustment:** A text input field.

- The current start and end dates for the month (MM/DD/YY).
- Enter 1 for Fund Source.
- Items sold without bid # - (Dollar amount for money receipted for items sold that had no inventory number.)
- J/E to state 112 Equip Lines – (Amount that applies to the current month's 2-12 work, but not reflected on the month's equipment transactions. **\*\*Helpful hint\*\*** Minus ("-") the amount if you have entered the item, and/or Plus ("+") the amount if an expenditure was coded from the wrong account. (e.g. paid from major, but should have been minor). Do not key a dollar sign, comma or decimal, (i.e. \$1,000.00 should be keyed 100000)
- Any miscellaneous Equipment Inventory Adjustments.

**\*\*\*\*\*NOTE: THIS PROCESS MUST BE DONE MONTHLY AND ALL COPIES OF THE AUDIT SHEETS FORWARDED TO THE SYSTEM OFFICE NO LATER THAN THE 15<sup>TH</sup> OF EACH MONTH. \*\*\*\*\***

XIHR produces three reports.

### Report 1 – General Ledger Expenditures for month

October 03 2005		Equipment Audit Report G/L-Summary Report for 09/01/05 to 09/30/05					
Summary Account	Vouchers Cash - Rcpts	Jrnl-Ent	CR-Vouchers	R-Cash-Rcpts	CR-Jrnl-Ent	Acct Total	
17_920_20_553000_43300*4	150.50	0.00	0.00	0.00	0.00	150.50	
17_920_97_552040_47200*4	265.94	0.00	0.00	0.00	0.00	265.94	
	416.44	0.00	0.00	0.00	0.00	416.44	

### Report 2 – Equipment placed into inventory

October 03 2005		Equipment Audit Report			
Page: 1					
Item	Action 1	Action 2	Action 3&4	Action 8	Action 9
009819	0.00	75.25	0.00	0.00	0.00
009820	0.00	75.25	0.00	0.00	0.00
009821	0.00	265.94	0.00	0.00	0.00
	0.00	416.44	0.00	0.00	0.00

### Report 3 – Summary of Equipment and GL totals

October 03 2005		GL/Equipment History Summary	
Report		Page: 1	
Items sold without bid #	0.00		
J/E to state 112 Equip Lines	0.00		
Misc Equipment Inventory Adj	0.00		
Total Federal Fund Source Amt	0.00		
Totals for action codes 1 and 2	416.44		
Totals for action codes 3 4 8 9	0.00		
Equipment Total	416.44		
G/L Summary Total	416.44		

**The Equipment and G/L Summary Total must match, if they do not, the user must research to find the discrepancy**

## PROBLEM SOLVING FOR MONTHLY AUDIT

In certain scenarios, the G/L Summary amount may be less than the Equipment Totals. If this occurs, the first area to research is to the **XIEP** screen. **XIEP – Equipment Parameters** determines the equipment to populate on reports by Asset Types, general ledger codes the monthly audit report checks and the transmittal information for the year end transmitting of reports. If the G/L Summary is less than the Equipment Totals, verify that all the object codes listed under EI Object Codes are accurate. Once the user verifies the codes are listed correctly, re-run **XIHR**.

Datatel - ACS-buildtest - CF

File Edit Favorites Tools Help

Mnemonic XIEP Go

XIEP-Equipment Parameters

Asset Types

1	EQP Equipment
2	EQPC Equipment - County
3	EQPF Equipment - Fed

SO IP Address 10.1.1.2

SO Export Directory /export/home/kenm

Login ID kenm

Password xxxxxxxxxxxxxxxxx

EI Object Codes

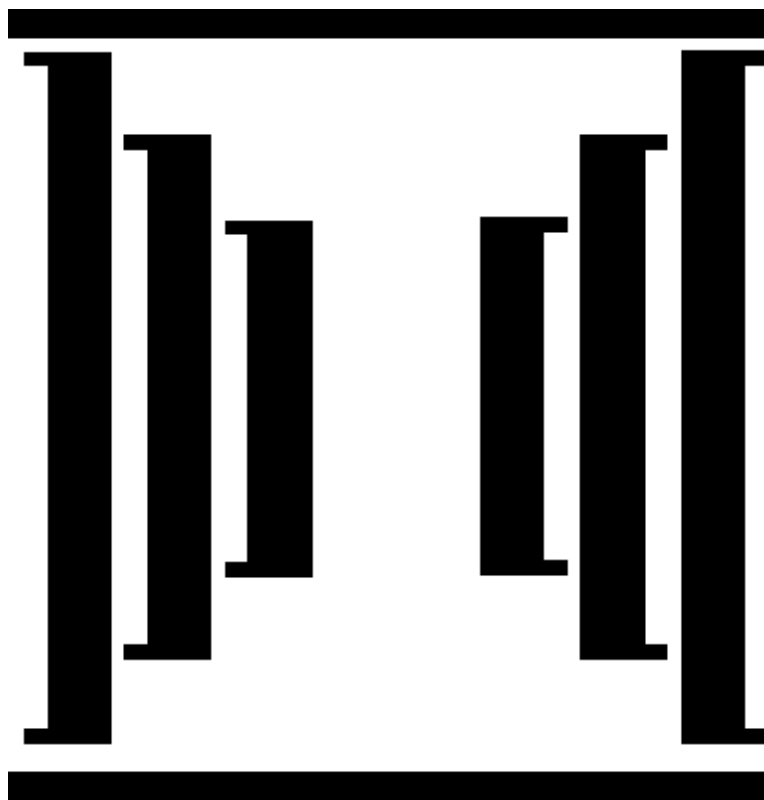
1	551000	Office Equipment
2	551500	Lease/Purchase of D
3	552000	Data Processing Equ
4	552500	Lease/Purchase of D
5	553000	Educational Equipme

Scanner Format

Controller Value 1/4

- **Note:** The Monthly Audit may be ran more that once after the month is balanced and for any month. Example - The operator may run a July report in May.

# ***TRANSFER & DISPOSAL***

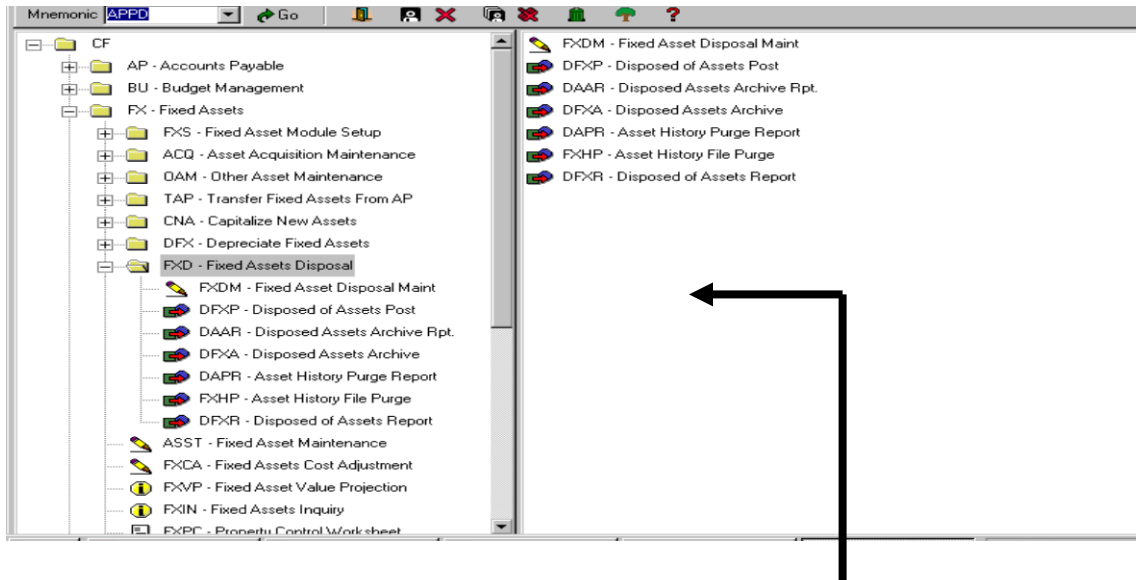


## **SECTION C**

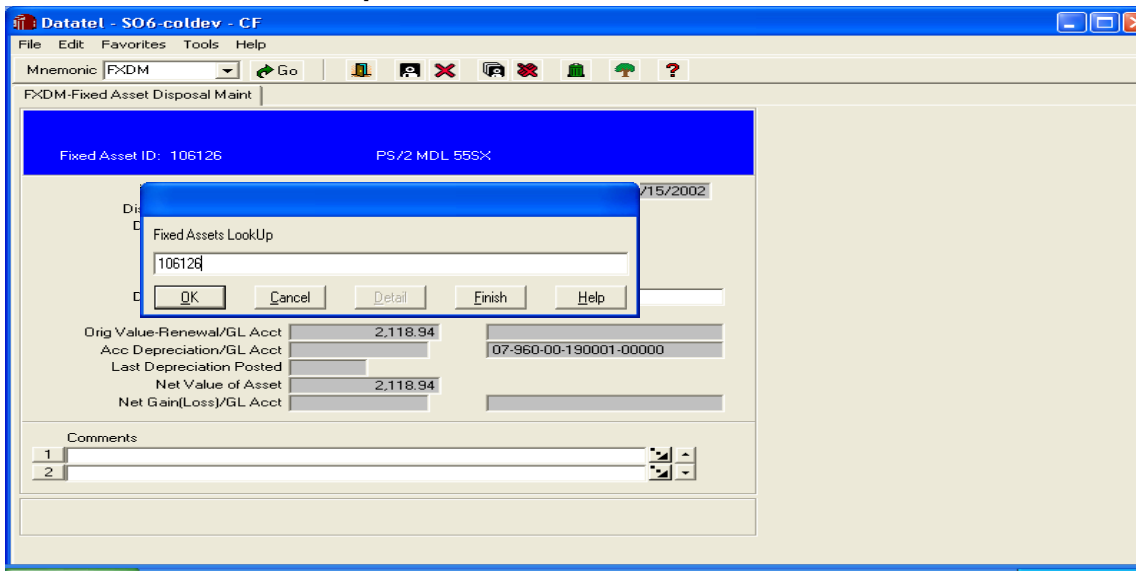
## EQUIPMENT TRANSFER AND DISPOSAL PROCEDURES

This section contains procedures on how to transfer equipment to other community colleges and public schools; sell and trade-in items; and how to remove items from the inventory when they are lost or stolen, cannibalized, or require other disposition.

The following mnemonics must be done in the order they appear to properly dispose of equipment. **(Please refer to original training manuals for further details.)**



### 1- FXDM - Fixed Asset Disposal Maintenance



- Enter the asset inventory number into the **Fixed Asset LookUp Box**, or use a LookUp option to access the resolution screen.
- The **FXDM** screen appears with the **Asset ID** number in the header, the **Acquisition Date** entered, and the cursor in the **Disposal Date** field.

**Datatel - SO6-coldev - CF**

File Edit Favorites Tools Help

Mnemonic FXDM Go

FXDM-Fixed Asset Disposal Maint

Fixed Asset ID: 106126 PS/2 MDL 555X

Capitalize No Acquisition Date 11/15/2002

Disposal Date/Bid Num 04/11/05

Disposal Fund Source 1 States 2-12

Disposal Method CB Cannibalized

Disposal Price

Disposal Cost

Disposal Net/GL Acct

Orig Value-Renewal/GL Acct 2,118.94

Acc Depreciation/GL Acct 07-960-00-190001-00000

Last Depreciation Posted

Net Value of Asset 2,118.94

Net Gain(Loss)/GL Acct

Comments

1

2

The following fields are required for items to be disposed of properly.

- **Disposal Date/Bid Number** – Enter the date of disposal and/or the bid number.
- **Disposal Fund Source** – Enter the appropriate fund source.(should be the same Fund Source used to purchase item.)
- **Disposal Method** – Enter the **Disposal Method Code**, or use a LookUp option to access the resolution screen.

The following fields are only used when the Disposal Method is sold or trade-in.

- **Disposal Price** – Enter the price received at disposal (such as trade-in or sale price)
- **Disposal Cost** – Enter any cost associated with disposing the asset, Ex. State Surplus fee.

## 2- DFXR - Disposed of Assets Reports

**Datatel - SO6-MCCS.COLDEV - CF**

File Edit Favorites Tools Help

Quick Access DFXR Go

DFXR-Disposed of Assets Report

Status: Disposed Operator: Wade Quinn 10/10/05 15:09

Transaction Date 11/01/05

Asset Types 1 2 3

Asset Categories 1 2 3

Acquisition Method

Ranges

Acquisition Date Begin End

Disposal Date

Additional Selection Criteria? No

Controller Asset Types No Values

Asset Types LookUp

Transaction Date is the only required field. User must run this report without any errors (status of "Ready") before they can complete the Disposed of Assets Post (DFXP) screen. The DFXP screen posts the information contained in the most recent error-free report.

## DFXR - Disposed of Assets Reports

Report Browser

11/01/05

Disposed of Assets Report - Equipment  
Transaction Date 11/01/05

Cat	Asset ID	Description	Building	Manufacturer
Capitalize	Size	Department	Model Number	Serial Number
		Location		
0268	106202	computers	Block 1	
No				

Totals For: Equipment

## 3- DFXP - Disposed of Assets Post

Datatel - SO6-NCCCS-COLDEV - CF

File Edit Favorites Tools Help

Quick Access [ ] Go [ ] [ ] [ ] [ ] [ ] [ ] [ ]

DFXP-Disposed of Assets Post

Status: Ready to Post Operator: Wade Quinn 11/01/05 09:34

Do you wish to post disposed assets? [Y]

Enter [Y] to post the disposal information created in the Disposed of Assets Report (FXDR). Entering "N" does not delete the disposal information created by the report. You can post disposal at another time or you can run another FXDR report that will overwrite the current disposal information.

#### 4- DAAR - Disposed Assets Archive Report

Datatel - SO6-NCDEV - CF

File Edit Favorites Tools Help

Quick Access

DAAR-Disposed Assets Archive Rpt.

Status: Register Operator: Wade Quinn /10/2005 15:12

Transaction Date

Asset Types

Asset Categories

Acquisition Method

Ranges

Acquisition Date  End

Disposal Date

Additional Selection Criteria?

Controller Asset Types No Values

Asset Types LookUp

start Novell-delivered ... Novell GroupWise... Eq Proc Manual - ... Datatel - SO6-NC... 2:40 PM

Use the Disposed Assets Archive Report (DAAR) to select a group of assets that have been disposed using the Disposed of Assets Post (DFXP) screen and to generate a report. If no errors occur during the DAAR report (the status of the report is "Ready"), you can archive the assets that appear on the report using the Disposed Assets Archive (DFXA) screen.

**\*\*\*Note:** This report will run successfully only if the assets selected are not associated with a room or building. Running this report for an asset that is associated with a room or building or that is the asset record for a building will produce errors and a status of "Register."

## DAAR - Disposed Assets Archive Report

Report Browser

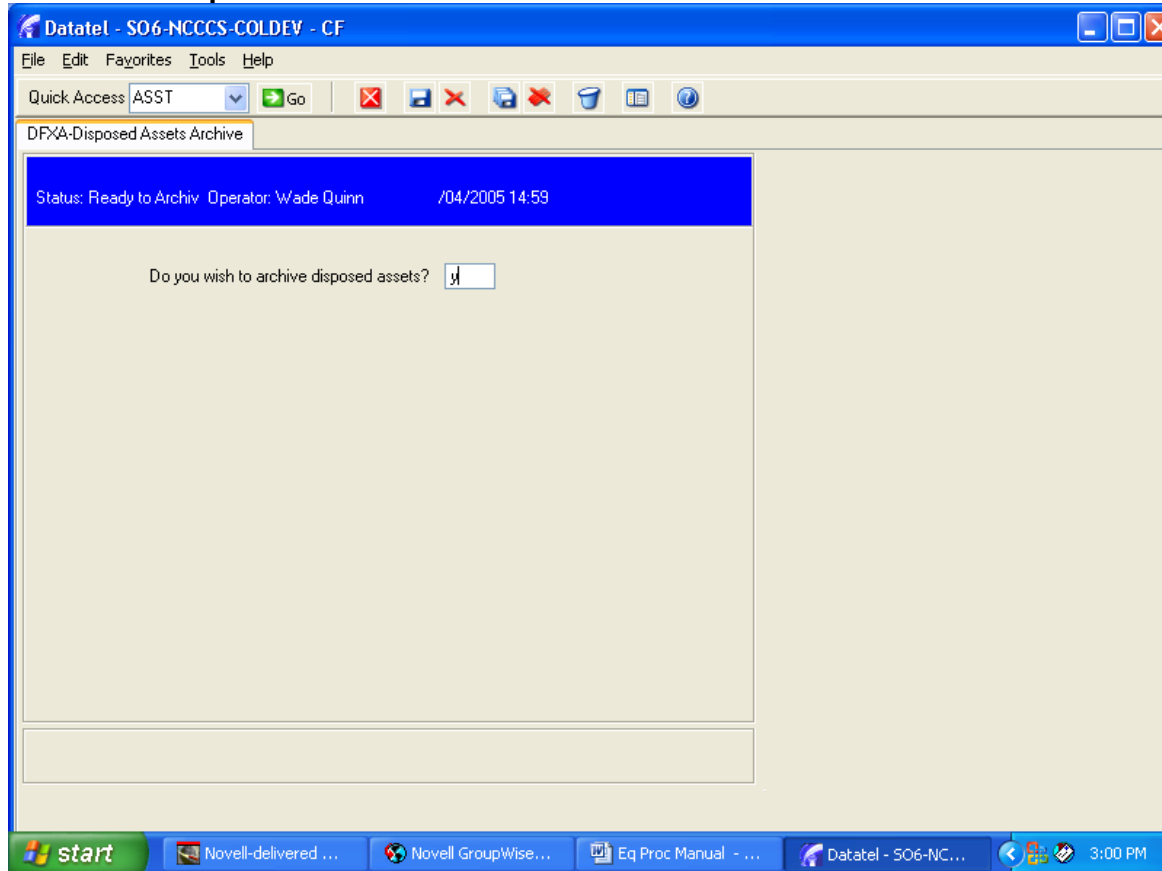
November 04 2005 14:48

DISPOSED ASSETS ARCHIVE REPORT

Category	Asset ID	Description	Acquisition Date	Disposal Date	Di
0011	999882	Overhead Projector	05/01/03	05/25/05	
0035	106527	COMPUTER 386SX	05/15/01	01/15/01	
0035	106558	COMPUTER 386DX	05/15/01	05/11/04	
0035	106559	COMPUTER 386DX	05/15/01	03/15/00	
0042	104046	COMPUTER.	12/15/01	06/14/04	
0042	106551	COMPUTER 386SX	05/15/01	01/15/00	
0042	999883	Computer	12/15/01	05/25/05	
0123	000102	TEST	12/15/00	06/27/05	
0124	106394	EXPRESS COMPUTER 425SLC	05/15/01	02/17/05	
0124	106401	COMPUTER 48X-25	12/15/01	06/15/05	
0124	106402	COMPUTER 48X-25	05/15/00	05/25/05	
0125	234567	Desk	09/09/02	02/17/05	
0268	200000	Desktop Pc	11/01/00	06/01/05	
0299	110089	1999 FORD F250 TRUCK	08/15/99	05/25/05	

**Note: DAAR and DFXA processes should only be done once every three to four years. This process completely erases all history of the fixed asset.**

## 5- DFXA - Disposed Assets Archive



Use the Disposed of Assets Archive (DFXA) screen to transfer information related to disposed assets from the fixed asset files to the fixed asset history (ASSET.HISTORY) file. Before you can complete this screen you must first run a Disposed Assets Archive Report (DAAR) that contains no errors (the status for the report is "Ready").

The Disposed Assets Archive (DFXA) screen removes assets from normal processing (i.e. assets that have been archived will no longer appear on the Fixed Asset Maintenance [ASST] screen), and moves them to a holding file until they are purged. The assets that are archived by this process are the assets that appeared in the most recent Disposed Assets Archive Report (DAAR).

## SERVICEABLE EXCESS STATE OWNED EQUIPMENT

Following are the procedures to follow when disposing of serviceable excess **state owned** equipment.

1. When disposing of **serviceable** state owned equipment that can be **used by other colleges**, notice of the equipment being disposed of should be circulated to the other community colleges by an "E-mail" message prior to the disposal, include a date to respond by. Minimum bids can be requested for equipment that is circulated through the system.
2. If no college requests the equipment, the college may then sell or donate the equipment to public schools or other governmental agencies. (G.S. 160A-274). There are no provisions to **donate** items to non-profit organizations. Equipment must be sold at a fair market value to non-profit organizations. (The State Surplus Property Agency may be able to help with the determination of fair market value.)
3. Serviceable excess equipment not taken through one of these processes may be sold through the State Surplus Agency (G.S. 115D-15). The procedures for disposing of surplus property are described on the following pages.

## PROCEDURES FOR SALE OF SURPLUS EQUIPMENT

Surplus state owned equipment may be sold through the State Surplus Property Agency or in the same manner as public schools dispose of surplus property. The following are procedures to follow in each method:

### 1. Disposal through the State Surplus Property Agency

Colleges must submit a request of items which they would like to surplus through the SSP Online System (<http://www.ncstatesurplus.com/ssp/agency/logon.asp>). For more information regarding this system please contact State Surplus at 919-854-2160.

If the college decides to deliver the items to surplus, all items must be properly tagged with the computerized labels before they can be delivered to State Surplus Property. Once items have been tagged by the agency, delivery should be coordinated by calling the State Surplus Property warehouse at (919) 854-2160 and schedule a delivery time. All appointments for delivery are made according to space availability in the warehouse.

Appointments for the delivery of ANY computer equipment, including printers, must be made by calling the computer warehouse site at (919) 733-2885.

If the college plans to sell a motor vehicle, the title must accompany your paperwork. If the vehicle is state owned (purchased with state funds), you will need to contact the Administrative and Facility Services Section at the System Office for the title.

If the college wishes to establish a minimum bid, the amount should be entered in the appropriate place on the Equipment Disposal Form (See the Forms Section). If a minimum bid is shown, no bids of less than that amount should be accepted by State Surplus Property on your behalf.

The State Surplus Property Agency will forward bid results showing the successful bidder and the bid amount to the college. After receipt of payment, State Surplus Property will send a check to the college for the surplus equipment sold, less 5% handling fee. (Note: After receipt of the check, the item can be removed from the inventory.)

If an item does not receive a successful bid on the first attempt at public sale it will be re-advertised. Every item will be advertised a minimum of two times. If all attempts at public sale prove unsuccessful, the college will be notified and disposal by other means can be explored.

The President of the college, or their designee, is responsible for ensuring that all equipment offered for disposal by the college is honestly represented as to condition, accessories, and attachments; that equipment being held for transfer or sale is available during normal working hours for inspection, that it is properly stored and secured, and that all components and accessories are available.

Persons making purchases are responsible for removing equipment from the selling college.

## 2. Disposal in the Same Manner as Public Schools

General Statute 115D-15 permits colleges to sell equipment in the same manner as is provided to public schools. The public school law (G.S. 115C-518) permits schools to sell equipment in the same manner as is provided to cities and towns (Article 12 of G.S. 160A). Please note that when Article 12 of G.S. 160A refers to a city council or city official, you should substitute your board of trustees or college official. Portions of Article 12 of G.S. 160A, **as of this printing**, are **briefly** summarized in 2 A, B, C, D and E. If you elect to use one of these methods, **you should refer to the full and latest version** of Article 12 of G.S. 160A and not rely on this summary. (See the “For Your Information” section for a web page for the N. C. General Statutes.)

- A. **Public or Private Exchanges and Sales G.S. 160A-266(c)** – Colleges may adopt regulations to dispose of personal property valued at less than \$5000 through public or private exchanges and sales. This method is designed to secure fair market value for property and to accomplish the disposal efficiently and economically. Colleges should authorize one or more officials to declare surplus any personal property valued at less than \$5000 for any one item or group of items, to set its fair market value, and to convey title in accord with these regulations.
- B. **Private sale G.S. 160A-267** - Colleges may dispose of property valued at less than \$30,000 through a private sale. If a college feels strongly enough that this is the best way to dispose of property, it shall at a regular board meeting adopt a resolution or order authorizing the college president or chief fiscal officer to dispose of the property by private sale at a negotiated price. The resolution or order shall identify the property to be sold and may, but need not, require a minimum price. A notice summarizing the contents of the resolution or order shall be published once after its adoption, and no sale shall be consummated thereunder until 10 days after its publication.
- C. **Advertisement for sealed bids G.S. 160A-268** The sale of property by advertisement for sealed bids shall be done in the manner prescribed by law for the purchase of property, except that in the case of real property the advertisement for bids shall begin not less than 30 days before the date fixed for opening bids. (1971, c. 698, s. 1.)
- D. **Negotiated offer, advertisement, and upset bids G.S. 160A-269** – This is a complicated process that permits a college to receive, solicit, or negotiate an offer to purchase property. Once an offer is received, the college will then advertise the offer in the hope of receiving upset bids. This process requires a deposit of 5% of the bid, stipulates minimum amounts that an offer must be raised, and can go on indefinitely.
- E. **Public auction G.S. 160A-270** - When it is proposed to sell personal property at public auction, the local board of trustees at a regular board meeting shall adopt a resolution or order authorizing the college to dispose of the property at public auction. The resolution or order shall identify the property to be sold and set out the date, time, place, and terms of the sale. The resolution or order shall be published at least once and not less than 10 days before the date of the auction.

## DISPOSITION OF LOCALLY OWNED EQUIPMENT AND MATERIALS

Colleges have the option of disposing of locally owned equipment and materials through the State Surplus Property Agency or in the same manner as permitted for public schools. (See the "For Your Information" section for a web page for the N. C. General Statutes.)

Colleges are **not** required to make **locally owned** equipment available to other community colleges; however, colleges are encouraged to do so as there may be other colleges with a need for the excess items. Minimum bids can be requested for locally owned equipment that is circulated through the system.

## LOSS OR THEFT OF EQUIPMENT

Each college has the responsibility to provide accountability for all equipment in its custody. Effective equipment control measures should be implemented to keep equipment losses to a minimum. If a loss should occur, the following steps should be taken:

1. Pursuant to G.S. 114-15.1, “Any person employed by the State of North Carolina, its agencies or institutions, who receives any information or evidence of an attempted arson, or arson, damage of, theft from, or theft of, or embezzlement from, or embezzlement of, or misuse of, any state-owned personal property, buildings or other real property, shall as soon as possible, but not later than three days from receipt of the information or evidence, report such information or evidence to his immediate supervisor, who shall in turn report such information or evidence to the head of the respective department, agency, or institution. The head of any department, agency, or institution receiving such information or evidence shall, within a reasonable time but no later than 10 days from receipt thereof, report such information in writing to the Director of the State Bureau of Investigation.

Upon receipt of notification and information as provided for in this section, the State Bureau of Investigation shall, if appropriate, conduct an investigation.

The employees of all State departments, agencies and institutions are hereby required to cooperate with the State Bureau of Investigation, its officers and agents, as far as may be possible, in aid of such investigation.

If such investigation reveals a possible violation of the criminal laws, the results thereof shall be reported by the State Bureau of Investigation to the district attorney of any district if the same concerns persons or offenses in his district.” (1977, c. 763; 2003-214, s. 1(1).)

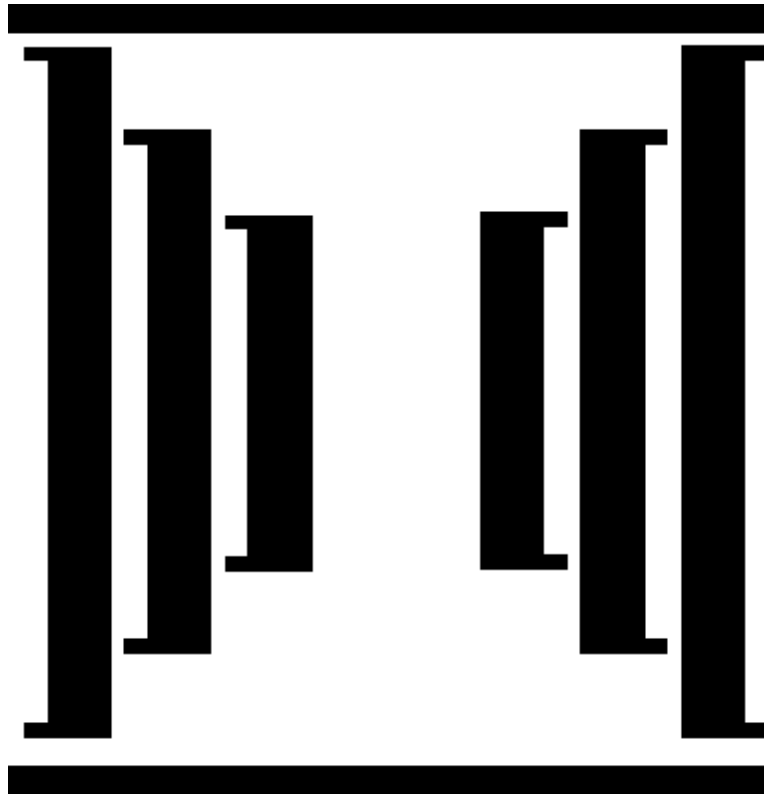
2. The chief business official should be notified immediately.
3. An immediate search should be initiated for the missing item to confirm the loss or theft. Instances of forcible entry must be reported to the local law enforcement agency.
4. The chief business official should investigate a loss or suspected theft and report findings to the president of the college, stating the apparent cause of the loss or theft.
5. When the losses have been confirmed, a Form NCCCS 4-11 must be prepared by a responsible college official and signed by the chief business officer for the file. When applicable, investigative reports should be included in the file.
6. The institution should prepare the NCCCS 4-11 form (Request to Dispose of Capital Assets) with the appropriate signatures, and they should be kept on file with a copy of the police report.
7. The Administrative and Facility Services Section may request additional information and may make on-site visits to colleges in an effort to determine reasons for losses and to assist in any way possible.

## CANNIBALIZATION OF EQUIPMENT

This section provides guidance for the cannibalization of state owned equipment that has become unserviceable due to obsolescence or excessive repair costs, but which still has serviceable component parts that can be used to repair, modify or construct other items of equipment.

- 1 The college should initiate a Form 4-11 (Request to Dispose of Capital Assets) requesting approval of the Chief Business Officer to cannibalize an equipment item. This should be done prior to cannibalization of the item.
- 2 Parts resulting from cannibalization which are identifiable and have a value of \$1,000 or more should be placed on inventory and given a new inventory item number.
- 3 Disposal of residual parts cannot be used for personal gain.
- 4 Residual parts may be disposed of through one of the following methods:
  - a. Sale as an item through State Surplus Property Agency. This would occur when the residue is identifiable as a unique item.
  - b. Scrap sale would occur when residual items have little value as a unit, but could be placed in a scrap pile with similar items.
  - c. Items such as broken wood, plastics or glass parts with no further value may be destroyed in a suitable site and manner (county landfill, city dump, etc).  
EXTREME CARE SHOULD BE TAKEN NOT TO THROW AWAY ANY USABLE ITEM, OR ANY ITEM WHICH COULD BE REASONABLY REPAIRED INTO A USEFUL ITEM.**
5. Scrap materials resulting from cannibalized equipment, as well as from other sources, should be kept until a minimum load of approximately 1,000 pounds is accumulated. The college may report the scrap material to the State Surplus Property Agency for public bid sale, giving the approximate weight and type (copper, brass, steel, etc.) of material to be sold, or disposed of by local sale in accordance with previously described procedures. Money from the sale of scrap resulting from cannibalized equipment will be deposited to the college's equipment budget.

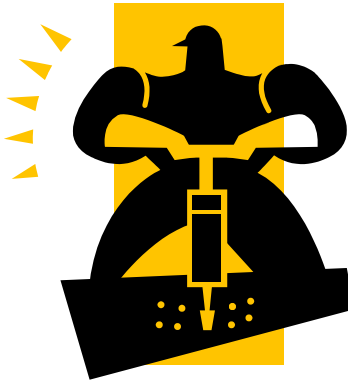
# ***AUDITS***



## **SECTION D**

## BAR CODE SCANNING PROCESSING

**\*\*\*\*\*UNDER CONSTRUCTION\*\*\*\*\***



## SCANNING AND UPLOADING INVENTORY DATA

**\*\*\*\*\*UNDER CONSTRUCTION\*\*\*\*\***



## COLLEGE INTERNAL EQUIPMENT AUDIT PROCEDURES

1. A complete internal inventory audit of major equipment must be conducted during each fiscal year by all colleges in the Community College System. **The internal audit will be due in the Community College System Office by August 1<sup>st</sup> of each fiscal year.**
2. Standard report forms NCCCS 4-13, (Program Report - Internal Equipment Audit), must be used by each college for conducting and reporting equipment audit results to the Administrative and Facility Services Section. While it is not mandatory for the NCCCS 4-13 forms to be typed, it is essential that they be neat, legible and reproducible. **A college is only required to submit a form for the program(s) that has missing equipment.** If the program(s) have no missing equipment, then the form is not required. If a college **has** located all equipment during the audit, one form must be submitted indicating all items were located.
3. The original of the completed form will be submitted to the Administrative and Facility Services Section at the conclusion of the internal audit. A cover letter must be submitted with the form with the signatures of the college individual responsible for the inventory and the President.
4. Records will be maintained in the Administrative and Facility Services Section to insure that an Internal Equipment Audit is conducted annually by each college. A college may choose to conduct a complete inventory audit more than one time a year.
5. In addition to the NCCCS 4-13, fund source, and deletions report, colleges must submit the Annual Internal Equipment Audit Reconciliation (NCCCS 4-21). This form is intended to assist the colleges with the year-end reconciliations. Colleges must report that the fund source report reconciles with the electronic fund source report that is electronically transmitted to the System Office when XITR is processed. XITR should only be processed when the college has completed all transactions for the fiscal year by June 30. In order for a college to obtain a copy of the electronic fund source report, the college will submit, by email, a request to Wade Quinn and Karen Kelly.
6. The Administrative and Facility Service Section will review the inventory reports (NCCCS 4-13, NCCCS 4-21, fund source, and deletions) and take appropriate follow-up action. The Vice President for Business & Finance must approve any recommendations of financial adjustments because of excessive losses, poor security, etc. Included in the report prepared by the Administrative and Facility Services Section will be a summary of items reported by the institution on the NCCCS 4-13 form as lost or stolen, and those items with an Action Code 5 reported on the institutions deletions report. It is the responsibility of the College (equipment coordinator) to ensure that items reported on college internal audit reports, and on the deletions report, are not to be duplicated from one fiscal year to the next. If the items are reported lost or stolen during the Internal Equipment Audit, the then coordinator should also delete the item as the same in Colleague.
7. The Administrative and Facility Services Section will provide a copy of the summary report reflecting the findings of the college's internal audit report to the following offices/persons: the college president, the chief business official, the equipment coordinator, and to the Vice President for Business & Finance at the Community College System Office.
8. Any remarks worthy of notation should be entered in the "comments" section of the NCCCS 4-13 form. Equipment that has previously been reported missing and is found during the annual audit should be noted in the "comments" section and re-entered into equipment inventory records.

## **ON-SITE EQUIPMENT AUDITS**

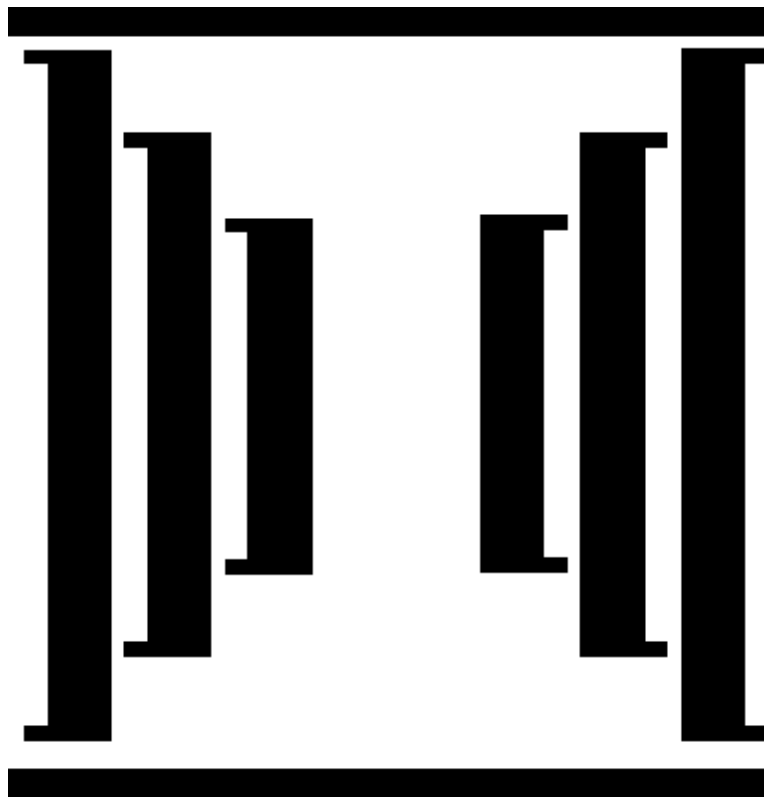
Based on the review of the college's Internal Equipment Audits, the Administrative and Facility Services Section may conduct on-site spot checks of equipment or partial equipment audits at the election of the State Board of Community Colleges or the Community College System Office.

Approximately one percent of the total inventory will be checked during the spot check process. The college will be notified one week prior to the spot check. No advance listing of the items to be audited will be sent to the college. The selection of items to be audited will be made by the Administrative and Facility Services Section.

If a complete equipment audit is performed at a college the college will be notified approximately one week prior to the onset of the audit.

The Administrative and Facility Services Section will provide a copy of the spot check equipment audit results to the equipment coordinator, chairperson of the college's board of trustees, college president, chief business official, and to the Vice President for Business and Finance at the Community College System Office.

# ***FOR YOUR INFORMATION***



## **SECTION E**

### **Reports and Due Dates**

The following reports are due to the System Office on a monthly or annual basis:

<b><u>Reports</u></b>	<b><u>Due Date</u></b>
Monthly Audit Report ( <b>XIHR</b> ) (Monthly)	15 <sup>th</sup> of each month
Fund Source Report ( <b>XIER</b> ) (Annual)	August 1
Electronic Transmittal ( <b>XITR</b> ) (Annual)	August 1
Deletions Report ( <b>Query Builder</b> ) (Annual)	August 1
Internal Equipment Audit ( <b>NCCCS Form 4-13</b> ) (Annual)	August 1
Internal Equipment Audit Reconciliation ( <b>NCCCS Form 4-21</b> ) (Annual)	August 1
Purchasing Flexibility Report (Annual)	August 1

## **EQUIPMENT COORDINATORS AND CHIEF BUSINESS OFFICIALS**

<u>College</u>	<u>Unit</u>	<u>Equipment Coordinator</u>	<u>Chief Business Official</u>
Alamance	886	Craig Batts	David Cheek
Asheville-Buncombe	802	Tina Fountain	Richard Mauney
Beaufort	804	Sherry Stotesberry	Phillip Price
Bladen	806	Lisa Neal	Loyd Horne
Blue Ridge	843	Rob Tucker	David Whitson
Brunswick	807	Sheila Galloway	Benjamin Beblois
Caldwell	808	Scott Rogers	David Holman
Cape Fear	810	Brooke Messerole	Camellia Rice
Carteret	812	Melva Davis	Janet Spriggs
Catawba	814	Mary Sherrill	Wes Bunch
Central Carolina	816	Mike Spivey	Wayne Robinson
Central Piedmont	818	David Matheny	Kathy Drumm
Cleveland	820	Jill Montgomery	Tommy Greene
Coastal Carolina	858	Carol Balcom	David Heatherly
College of Albemarle	822	Debra Holland	Jim Turdici
Craven	824	Todd Murphey	John Peterson
Davidson	826	Valerie Herndon	Roger White
Durham	828	Yolanda Moore-Jones	Cynthia Carter
Edgecombe	830	Shirley Foreman	Charlie Harrell
Fayetteville	832	Tommy Owen	Betty Smith
Forsyth	834	Phil McClung	Kenneth Jarvis
Gaston	836	Sandra Lucas	Ralph Huddin
Guilford	838	Virginia Foster	Rae Marie Smith
Halifax	840	Virginia Griffin	Earl Daniels
Haywood	842	Bobbie Smith	Karen J. Denney
Isothermal	844	Trish Huntsinger	Stephen Matheny
James Sprunt	846	Kay Sessoms	John Hardison III
Johnston	847	Doug Pate	Herman Kight
Lenoir	848	BJ Koonce	George "Bud" Vick
Martin	850	Lona Binnicker	Adrienne Smith
Mayland	851	Don Hensley	Julia Hardie
McDowell	852	Ray McKesson	Ray McKesson
Mitchell	853	Tammy Rackley	Richard Lefevre
Montgomery	854	Sandra McCallum	Daffie Matthews
Nash	856	Carol Linnecke	Tony Jernigan
Pamlico	860	Kathy Mayo	Virginia Traver
Piedmont	861	Richard Cramer	William Barnes
Pitt	862	Scott Chauncey	Ricky Brown
Randolph	864	Jane Allen	Joseph Snell
Richmond	866	Brent Barbee	Dale McInnis
Roanoke-Chowan	868	Nicole Hall	Lisa Roland
Robeson	870	Estelle Wiggins	

## EQUIPMENT COORDINATORS AND CHIEF BUSINESS OFFICIALS

<u>College</u>	<u>Unit</u>	<u>Equipment Coordinator</u>	<u>Chief Business Official</u>
Rockingham	872	John Parrish	Steve Woodruff
Rowan-Cabarrus	874	Debbie Hopkins	Karen Jerrett
Sampson	876	Shelby Kidd	Virginia Lucas
Sandhills	878	Marla Goodwin	Richard Gough
South Piedmont	800	Joe Cameron	Joe DeVitto
Southeastern	880	Robin Enzor	Betty Jo Sanders
Southwestern	882	Julie Voorhees	George Stanley
Stanly	883	Sherry Allen	Becky Wall
Surry	884	Susan Pendergraft	Gary Tilley
Tri-County	888	Judy Owenby	Jan Westmoreland
Vance-Granville	889	Sandra Newton	Gary Morgan
Wake	890	Tonya Grimes	Debra Wallace
Wayne	892	Mark Johnson	Alice Wadsworth
Western Piedmont	894	Shirley Walker	Malone McNeely
Wilkes	896	Steven Hall	Morgan Francis
Wilson	898	Donna Turner	Hadie Horne

NORTH CAROLINA COMMUNITY COLLEGE SYSTEM  
REPORT BY PROGRAM CODE/ASSET CATEGORY

<b>ASSET CATEGORY/ PROGRAM CODE.....</b>	<b>PROGRAM NAME.....</b>
001	FORESTRY MOBILE EQUIP
002	ACCOUNTING LAB
003	ADULT BASIC EDUCATION
004	ADULT HIGH SCHOOL
005	AG. CHEMICALS
006	AG. CHEMICALS-RELATED
007	AG. EQUIPMENT
008	AIR COND. & REF
009	AIR FRAME & POWER PLANT MECH.
010	AMBULANCE TRAINING
011	ANIMAL SCIENCE
012	ART DESIGN LAB
013	AUDIOVISUAL AIDS
014	AUDIOVISUAL EQUIPMENT
015	AUDIOVISUAL SYSTEM
016	AUDITORIUM
017	AUTOMOTIVE BODY
018	AUTOMOTIVE MECHANICS
019	TAXIDERMY
020	BIOLOGY ANA, PHY, & MICROB.
021	BIOLOGY - HERBARIUM
022	BIOLOGY LAB
023	BIOLOGY CULT. MEDIA
024	BOARD ROOM
025	CARPENTRY & CABINETMAKING
026	CHEMISTRY - ANALYTICAL
027	CHEMISTRY INDUSTRIAL
028	CHEMISTRY LAB GENERAL
029	READING LAB
030	CHEMISTRY - ORGANIC
031	CHEMISTRY PHYSICAL
032	CIVIL TESTING
033	CLASSROOM - GENERAL
034	CLASSROOM - SEMINAR
035	CLASSROOM - SCI. DEM.
036	COMMERCIAL ART & AD. DES.
037	CONFERENCE ROOM
038	MARINE RELATED OCCUPATIONS
039	COSMETOLOGY LAB
040	CULINARY SCIENCE

## REPORT BY PROGRAM CODE/ASSET CATEGORY

<b>ASSET CATEGORY/ PROGRAM CODE.....</b>	<b>PROGRAM NAME.....</b>
041	CREATIVE & FINE ARTS ADULT ED
042	DATA PROCESSING LAB
043	DENTAL DARK ROOM
044	DENTAL HYGIENE CLINIC
045	DENTAL LAB
046	DENTAL OPERATOR
047	DENTAL MAT. LAB
048	DENTAL X-RAY OPERATOR
049	RESPIRATORY THERAPY
050	DIESEL
051	DIESEL TRUCK MECHANIC
052	DRAFTING & DESIGN
053	DRAMA
054	DRIVER EDUCATION
055	DRY KILN
056	DUPLICATING
057	EARTH SCIENCE
058	ELECTRICAL
059	ELECTRICAL INSTALLATION
060	ELECTRICAL LINEMAN
061	ELECTRONICS
062	ENERGIZED ELECTRIC LINE
063	FACULTY LOUNGE
064	FARM MACHINERY
065	FARRIERING
066	FINE ARTS
067	OPTICAL LABORATORY
068	FIRE PROTECTION ENGINEERING
069	FIRE SERVICE TRAINING
070	FIRST AID ROOM NON-INSTR.
071	FIRST AID & SAFETY
072	FISHERIES OCCUPATIONS TRAINING
073	FISHERY SCIENCE
074	FLORAL DESIGN & SHOP MAN.
075	FOOD PROCESSING - BASIC
076	OCCUPATIONAL THERAPY ASST.
077	NUTRITION LABORATORY
078	HUMAN SERVICES
079	HOME & FAMILY LIVING
080	FOOD PROCESSING - SEA FOODS
081	FOOD SERVICE LAB

## REPORT BY PROGRAM CODE/ASSET CATEGORY

<b>ASSET CATEGORY/ PROGRAM CODE.....</b>	<b>PROGRAM NAME.....</b>
082	FOREST MANAGEMENT
083	FOREST RECREATION
084	FURNITURE DESIGN LAB
085	FURNITURE MANUFACTURING
086	EXTENSION & CONT. ED.
087	GRAPHIC ARTS - GENERAL
088	GRAPHIC ARTS LAB
089	GUIDED STUDIES
090	HEALTH, SAFETY/RELATED AD. ED.
091	HEATING SYSTEMS
092	HEAVY EQUIP. EARTHMOVING MACH.
093	HEAVY EQUIP. EARTHMOVING OPER.
094	HOMEMAKING - AD. ED.
095	HORTICULTURAL SCIENCE LAB
096	HOTEL MOTEL MANAGEMENT
097	HYDRAULIC FLOW
098	HYDRAULICS & PNEUMATICS
099	COMMERCIAL FISHING
100	INDUSTRIAL MAINTENANCE
101	INSTRUMENTATION
102	INSTRUMENT MECHANIC
103	INTERIOR DESIGN LAB
104	MENTAL HEALTH ASSOC.
105	JOURNALISM
106	LAW ENFORCEMENT TRAINING
107	LEARNING LAB
108	LEARNING RESOURCES C. - LIB.
109	LIGHT CONSTRUCTION
110	PLANER MILL/LUMBER GRADING
111	MACHINE SHOP
112	LIFE SCIENCE LAB
113	MACHINE TOOL
114	MARINE BIOLOGY
115	MARINE MECHANICS
116	MARINE TECHNOLOGY
117	MASONRY
118	MATERIALS TESTING
119	MEDICAL LAB
120	MARINE CONSTRUCTION
121	MEDICAL RECORDS LAB
122	POTTERY SCIENCE

## REPORT BY PROGRAM CODE/ASSET CATEGORY

<b>ASSET CATEGORY/ PROGRAM CODE.....</b>	<b>PROGRAM NAME.....</b>
123	MUSIC
124	NURSING PRACTICE LAB
125	ADMIN. OFFICE FURNITURE
126	ADMIN. OFFICE EQUIPMENT
127	OFFICE - FACULTY
128	OFFICE SECRETARIAL
129	OFFICE MACHINE LAB
130	OPERATING ROOM TECHNICIAN
131	DISPENSING LAB
132	MODEL & PATTERN SHOP
133	PHOTOGRAPHY LAB
134	PHOTO RELATED
135	MATHEMATICS
136	PHYSICAL ED
137	PHYSICAL THERAPY ASST.
138	PHYSICAL COLLEGE TRANS
139	PHYSICS OPTICIAN
140	PHYSICS LAB
141	PHYSICS VOCATIONAL
142	PLANT SCIENCE
143	PLANT LAYOUT
144	PLUMBING & PIPE FITTING
145	POULTRY SCIENCE
146	PRODUCTION, PLANNING
147	PSYCHOLOGY LAB
148	PULP & PAPER
149	QUALITY CONTROL
150	RADIOLOGIC TECHNOLOGY
151	ELECTRONIC SERVICING
152	RADIO/TV BROADCASTING
153	RECEPTION AREA - MAIN
154	RECREATIONAL GROUNDS MAN.
155	RECREATIONAL THERAPY
156	ENVIRONMENTAL SCIENCE
157	SAW FILER
158	SAW MILLING
159	SECRETARIAL LAB
160	SEWING MACHINE MECHANIC
161	SHEET METAL SHOP
162	SMALL ENGINE REPAIR
163	SOIL SCIENCE

## REPORT BY PROGRAM CODE/ASSET CATEGORY

<b>ASSET CATEGORY/ PROGRAM CODE.....</b>	<b>PROGRAM NAME.....</b>
164	ELECTRONIC MOTOR REPAIR
165	STENOGRAPHER LAB
166	STERILIZATION AREA
167	STORAGE GENERAL
168	STUDENT LOUNGE
169	STUDENT MEETING ROOM
170	STUDENT PER. SER. AREA
171	SUPERVISORY DEV. TRAINING
172	MARINE ELECTRONICS
173	SURVEYING
174	SURVEYING - RELATED
175	TELEPHONY
176	TEXTILE MANUFACTURING
177	TIME & MOTION STUDY
178	TOOL & DIE SHOP
179	TRANSPORTATION MAINTENANCE
180	TYPING & STENO LAB
181	UPHOLSTERY, CUTTING & SEWING
182	VETERINARY MEDICINE - L.A.
183	AUDIOVISUAL TECHNOLOGY
184	WATCHING MAKING
185	WELDING
186	GUN SMITHING
187	WILDLIFE SCIENCE
188	FOREST PRODUCTS TECHNOLOGY
189	WOOD PRODUCTS - SECONDARY
190	ELECTROMECHANICAL
191	BOAT BUILDING
192	PIANO TUNING
193	PART COUNTERMAN
194	INDUSTRIAL OCCUPATIONS
195	INTRODUCTION TO FIRE PRO. HAZ.
196	OCEANOGRAPHY
197	PHOTOGRAMMETRY
198	POLICE SCIENCE
199	VENDING MACHINES
200	INDUSTRIAL SAFETY & HEALTH
201	AVIATION MAN. & CAREER PILOT
202	LIBRARY TECH. ASST.. LAB
203	SEWING
204	PLASTICS

## REPORT BY PROGRAM CODE/ASSET CATEGORY

<b>ASSET CATEGORY/ PROGRAM CODE.....</b>	<b>PROGRAM NAME.....</b>
205	COMMERCIAL FISHERIES TECH
206	MEDICAL OFFICE ASST.
207	CHILD CARE
208	FUNERAL SERVICES
209	CRAFTS
210	INDUSTRIAL ELECTRICITY
211	PHOTOGRAPH - ANCILLARY
212	MOTORCYCLE MECHANIC
213	MARKETING & RETAIL LAB
214	RECREATION TECHNOLOGY
215	SHELTERED WORKSHOP
216	ORCHARD MGT. & HORTICULTURE
217	NUCLEAR TECHNOLOGY
218	COUNSELING SERVICES
219	ELECTRICAL APPLIANCE & REPAIR
220	TRUCK DRIVER TRAINING
221	NUCLEAR MEDICINE TECHNOLOGY
222	HISTORIC PRESERVATION TECH.
223	EMERGENCY MEDICAL TECHNOLOGY
224	TRUCK DRIVER TRNG. EQUIP. MAINT.
225	FIRE SCIENCE LAB
226	PHYSICIAN ASSISTANT
227	PERSONNEL SERVICES
228	PARALEGAL TECHNOLOGY
229	CRIMINAL JUSTICE
230	TEACHER ASSOCIATE
231	INSTRUCTIONAL SYSTEM
232	BIOMEDICAL TECHNOLOGY
233	EARLY CHILDHOOD SPECIALIST
234	READING GRANT
235	PHARMACY
236	SPECIAL SEV. FOR HANDICAPPED
237	ACADEMIC SERVICES
238	CLERICAL SERVICES
239	DATA PROCESS. LAB ADMINISTRATOR
240	FASHION MERCHANDISING/MARKETING
241	BUILDING TRADES DRAFTING
242	POSTAL SERVICES
243	WASTE WATER TREATMENT
244	INDUSTRIAL MECHANICS
245	DRUG & ALCOHOL TECHNOLOGY

## REPORT BY PROGRAM CODE/ASSET CATEGORY

<b>ASSET CATEGORY/ PROGRAM CODE.....</b>	<b>PROGRAM NAME.....</b>
246	BOOK STORE - LOCAL
247	COMPUTER ENGINEERING TECH
248	COMMUNICATIONS TECHNOLOGY
249	SMALL BUSINESS PROGRAM
250	EQUINE TECHNOLOGY
251	METAL ENGRAVING
252	ROBOTICS
253	PHYSIO -FITNESS/HEALTH TECH
254	ASTRONOMY
255	BUSINESS COMPUTER PROGRAMMING
256	ASSOCIATE DEGREE NURSING
257	LEARNING ASSISTANCE LAB
258	BUSINESS MICROCOMPUTER LAB
259	MEDICAL SONOGRAPHY
260	MANUFACTURING ENGINEERING TECH
261	INDUSTRIAL ENGINEERING TECH
262	MECHANICAL ENGINEERING TECH
263	TOOL DESIGN TECHNOLOGY
264	COLLEGE TRANSFER
265	AIR TRAFFIC CONTROL
266	DIGITAL ELECTRONIC REPAIR
267	ELECTRODIAGNOSTICS
268	COMPUTER CENTER
269	JTPA
270	ADM COMPUTERS/PERIPHERY
271	INSTRUCT. COMPUTERS/PERIPHERY
272	GERIATRIC ASSISTANT
273	ELECTRO-OPTICS/DATA COMMUN.
274	PUBLIC RADIO
275	ENGLISH DEPARTMENT
276	SPECIAL SERVICES - MATH LAB
277	HISTORY
278	BUILDING MAINTENANCE
279	GENERAL OFFICE-TECHNICAL ASSIST
280	ENERGY TECHNOLOGY
281	BUSINESS ADMINISTRATION
282	COLLEGE UNION
283	BOILER MECHANICS
284	CAREER RESOURCES
285	DEVELOPMENTAL EDUCATION
286	INDUSTRIAL MANAGEMENT

## REPORT BY PROGRAM CODE/ASSET CATEGORY

<b>ASSET CATEGORY/ PROGRAM CODE.....</b>	<b>PROGRAM NAME.....</b>
287	CO-OP PLACEMENT
288	ELECTRONIC ENGINEERING TECH
289	BANKING AND FINANCE
290	LIFE INSURANCE PROGRAM
291	REAL ESTATE
292	DENTAL ASSISTANT
293	NURSING ASSISTANT
294	MECHANICAL DRAFTING
295	SOCIAL SCIENCE
296	MICROELECTRONICS
297	CIVIL ENGINEERING
298	CUSTODIAL EQUIPMENT - LOCAL
299	GROUND EQUIPMENT - LOCAL
307	OFF CAMPUS LEARNING LAB
308	OFF CAMPUS LIBRARY
314	OFF CAMPUS AUDIOVISUAL
317	OFF CAMPUS MASONRY
318	OFF CAMPUS AUTOMOTIVE
324	OFF CAMPUS NURSING
325	OFF CAMPUS CARPENTRY
326	OFF CAMPUS ADM. OFF FURN.. & EQUIP.
* 329	OFF CAMPUS AUTOMATED SYSTEMS LAB
* 333	OFF CAMPUS GENERAL CLASSROOM
* 335	OFF CAMPUS GENERAL SCIENCE LAB
337	OFF CAMPUS PHYS THERAPY ASST.
342	OFF CAMPUS DATA PROCESSING
352	OFF CAMPUS DRAFTING & DESIGN
359	OFF CAMPUS ELEC. INSTALLATION
380	OFF CAMPUS TYPING & STENO LAB
384	OFF CAMPUS FURN. MANUFACTURING
385	OFF CAMPUS WELDING
386	OFF CAMPUS EXT/CONTINUING ED
400	STUDENT GOVERNMENT ASSOC - LOCAL
401	SECURITY - LOCAL
402	CAFETERIA - LOCAL
403	AUDITORIUM - LOCAL
404	DRAFTING - LOCAL
405	COSMETOLOGY - LOCAL
406	STUDENT LOUNGE - LOCAL
407	COMPUTER - LOCAL
408	CHEMISTRY - LOCAL

## REPORT BY PROGRAM CODE/ASSET CATEGORY

ASSET CATEGORY/ PROGRAM CODE.....	PROGRAM NAME.....
500	PHLEBOTOMY
501	PHYSICS LAB-TECH PREP GRANT
* 502	INDUSTRIAL CONSTRUCTION TECH.
* 503	CIVIC CENTER
* 504	INFORMATION HIGHWAY
* 505	SOCIAL SERVICES
* 506	AQUACULTURE TECHNOLOGIES
* 507	INDUSTRIAL TECHNOLOGY LAB
* 508	ARCHEOLOGICAL HISTORIC PRESERVATION
* 509	SPEECH LANGUAGE PATHOLOGY ASST.
* 510	TELEVISION STUDIO
* 511	OCCUPATIONAL EXTENSION
* 512	EMERGENCY SERVICES
* 513	INFORMATION SYSTEMS TECHNOLOGY
* 514	ARCHITECTURAL TECHNOLOGY
* 515	COMMUNITY SERVICES
* 516	MOTORCYCLE SAFETY
* 517	MOTOR SPORTS MANAGEMENT
* 518	MULTI MEDIA PROGRAM
* 519	INSTITUTIONAL EFFECTIVENESS
* 520	THERAPEUTIC MASSAGE
* 521	EMERGENCY PREPARDNESS TRAINING
* 522	OPHTHALMOLOGY
* 523	LEASE/RENTAL EQUIPMENT
* 524	SPANISH INTERPRETER
* 525	E-COMMERCE
* 526	DISTANCE EDUCATION
* 527	SLEEP RESEARCH
* 528	HISTOTECHNOLOGY
* 900	BUILDING AND INFRASTRUCTURE

- Denotes additions to the program codes.

## GENERAL STATUTES

### G.S. 115D Community Colleges

#### Art. 2 Local Administration

G.S. 115D-15 Sale, exchange, or lease of property; use of proceeds from donated property

#### Art. 3 Financial Support

G.S. 115D-32 Local financial support of institutions

#### Art. 4A Budgeting, Accounting, and Fiscal Management

G.S. 115D-58.5 Accounting system

G.S. 115D-58.14 Purchasing flexibility

G.S. 115D-58.15 Lease purchase and installment purchase contracts for equipment

### G.S. 143 State Departments, Institutions, and Commissions

#### Art.3 Purchases and Contracts

G.S. 143-48 State policy, cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors: purpose

G.S. 143-48.3 Electronic procurement

G.S. 143-52 Competitive bidding procedure

G.S. 143-53 Rules

G.S. 143-53.1 Setting of benchmarks: increase by Secretary

G.S. 143-57 Purchase of articles in certain emergencies

G.S. 143-57.1 Furniture requirements contracts

G.S. 143-58.2 State policy: bid procedures and specifications: identification of products

G.S. 143-58.3 Purchase of recycled paper and paper products

G.S. 143-64 Beverages contracts

G.S. 143-64.05 Service charges for disposal of surplus property and recyclable

G.S. 148-70 Management and care of inmates; prison industries; disposition of products of inmate labor

### G.S. 160A Cities and Towns

#### Art. 12 Sale and Disposition of Property

G.S. 160A-266 Methods of sale

G.S. 160A-266(c) Public or private exchanges and sales

G.S. 160A-267 Private sale

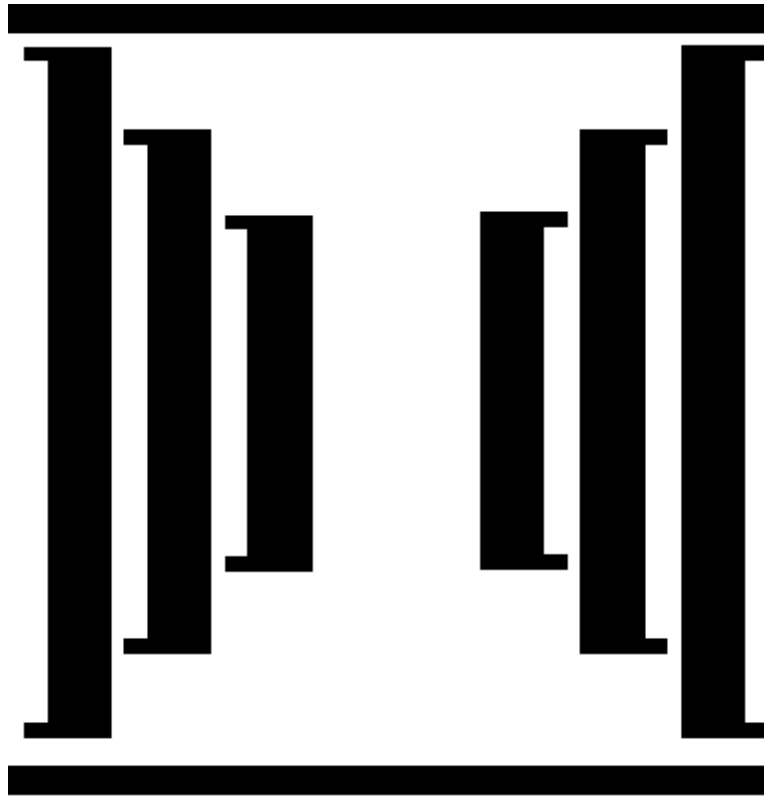
G.S. 160A-268 Advertisement for sealed bids

G.S. 160A-269 Negotiated offer, advertisement, and upset bids

G.S. 160A-270 Public auction

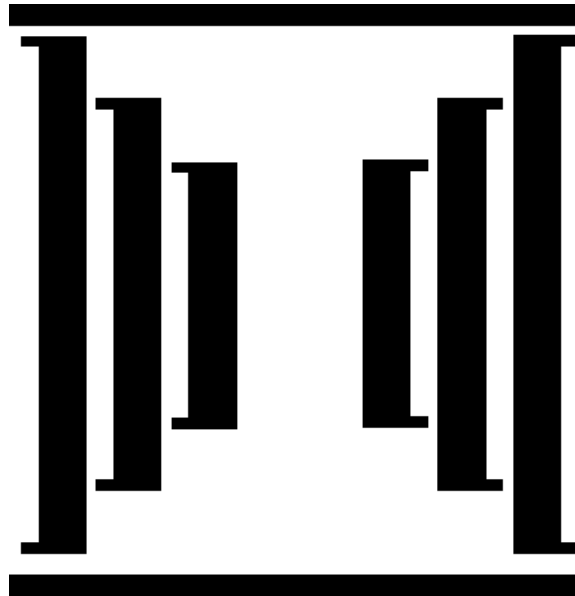
G.S. 160A-274 Sale, lease, exchange, and joint use of governmental property

# ***FORMS***



## **SECTION F**

# COMMUNITY COLLEGE SYSTEM OFFICE FORMS



## ASSIGNMENT OF ADDITIONAL COSTS FOR EQUIPMENT

**Institution:** \_\_\_\_\_ **Month** \_\_\_\_\_

**The purchase price of the below listed items should be increased in the amount shown to reflect additional costs. These adjustments should be entered in the Fixed Assets System equipment records.**

<u>Inventory No.</u> <u>(Explain)</u>	<u>Sales Tax</u>	<u>Freight</u>	<u>Installation</u>	<u>Other</u>
--	------------------	----------------	---------------------	--------------

**\$** **\$** **\$** **\$**

<b>*Total</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
---------------	-----------	-----------	-----------	-----------

**\* These totals must balance with the figures for these categories on the monthly 112 report.**







# NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

REQUEST TO DISPOSE OF CAPITAL ASSETS  
COMPLETE A SEPARATE SHEET FOR ITEMS FOR EACH TYPE OF REQUEST

_____ Circulate/transfer	_____ Trade-In	_____ Cannibalization
_____ Lost or Stolen	_____ Other _____	

Item No.	Quantity, description and person to see for inspection	Inventory Asset No.	Acquisition Cost	Date Purchased	Cond	Min Bid	Bid Amt
1	2	3	4	5	6	7	8

Reporting College _____	Bidding College _____
By _____	
Signature	Date
_____	
Business Officer Approval _____	
Signature	Date

NCCCS 4-11  
Nov. 00

## ANNUAL INTERNAL EQUIPMENT AUDIT RECONCILIATION

College: \_\_\_\_\_

<b>Fund Source</b>	<b>Prior Year Balance</b>	<b>Additions</b>	<b>Deletions</b>	<b>Adjustments</b>	<b>Current Year Balance</b>
0 = Institutional	0.00	0.00	0.00	0.00	<b>0.00</b>
1 = State	0.00	0.00	0.00	0.00	<b>0.00</b>
2 = County/Local	0.00	0.00	0.00	0.00	<b>0.00</b>
3 = Federal	0.00	0.00	0.00	0.00	<b>0.00</b>
4 = Construction	0.00	0.00	0.00	0.00	<b>0.00</b>
6 = Donation	0.00	0.00	0.00	0.00	<b>0.00</b>
9 = Minor	0.00	0.00	0.00	0.00	<b>0.00</b>
<b>Subtotal</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
Buildings & Infrastructure					
<b>Total</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

### Adjustment Notes/Documentation

\*\*\*\*\*The Current Year Balance Column must match your Fund Source Report submitted to the System Office.\*\*\*\*\*

**Prepared  
by:** \_\_\_\_\_

**NORTH CAROLINA COMMUNITY COLLEGE SYSTEM  
ADMINISTRATIVE AND FACILITY SERVICES  
ADJUSTMENTS TO INVENTORY FIGURES**

**College:** \_\_\_\_\_ **Month:** \_\_\_\_\_

**Items Sold with No Inventory Numbers:**

**Date of Form**  
**NCCCS 4-6**

**Bid Sale Number**

**Amount of Sale**

**\$**

**Total \$**

**Other Adjustments (example below):**

**Reason**

**Amount**

**Total \$**

**Example: Minor equipment coded as major**

\_\_\_\_\_  
**Signature of College Official**

\_\_\_\_\_  
**Date**

**INCLUDE THIS FORM WITH MONTHLY INVENTORY AUDIT IN MONTH'S TRANSACTIONS**

NCCCS 4-20  
Nov. 00

## Annual Internal Equipment Audit Summary Report

President

Community College

<u>EQUIPMENT FUND SOURCE INFORMATION FOR:</u>	<u>No. of Items</u>	<u>Acq. Cost</u>
1. State (minus buildings & infrastructures)	_____	_____
Construction (minus buildings & infrastructures)	_____	_____
Donated (minus buildings & infrastructures)	_____	_____
<b>Total</b>	_____	_____
2. Equipment not located during audit	_____	_____
3. Equipment reported on Deletions Report	_____	_____
4. Total equipment not located (line 2 plus line 3)	_____	_____
5. Percent (%) lost or stolen (line 4 divided by line 1)	_____	_____
6. Community College System Average		

Items reported lost/stolen	Item Number	Acq. Cost

Items reported on the Deletions Report	Item Number	Acq. Cost

7. Report Analysis:

NCCCS 4-14  
Revised Mar. 06

# PURCHASING FLEXIBILITY REPORT

Items covered under State Contract, but purchased from Non-Certified Sources

This report must be submitted on February 1 and August 1.

Reporting College: \_\_\_\_\_

Reporting Period: \_\_\_\_\_ through \_\_\_\_\_

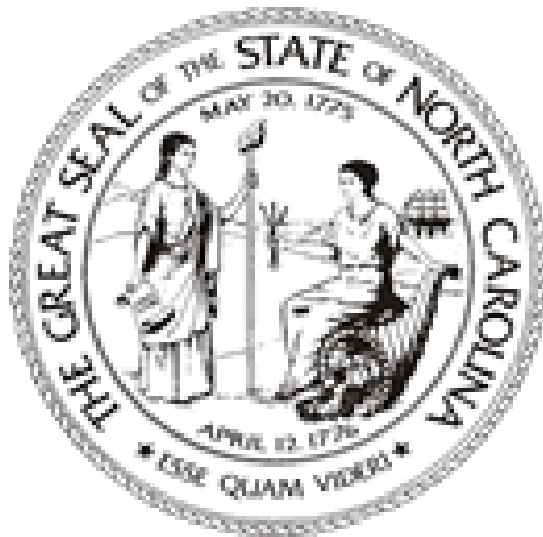
Descriptive Name of Item (1)	Purchase Order Number (2)	Term Contract Number (3)	Term Contract Cost Per Unit (4)	Non-Contract Cost Per Unit (5)	Saving Per Unit (Col 4 – Col 5) (6)	Number of Units Purchased (7)	Total Savings (Col 6 x Col 7) (8)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

P-Flex/report form

# Division of Purchase and Contract Forms



## Invitation for Bids (IFB) - (E-Procurement)

	<b>INVITATION FOR BIDS NO.</b> Bids will be publicly opened: Contract Type:
<i>Refer <u>ALL</u> Inquiries to:</i> Telephone No.                      Ext.	Commodity:
E-Mail:	Using Agency Name:
(See page 2 for mailing instructions.)	Agency Requisition No.

**NOTICE TO BIDDERS:** Sealed bids, subject to the conditions made a part hereof, will be received at this office (        ) until on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Refer to page 2 for proper mailing instructions. Bids submitted via telegraph, facsimile (FAX) machine, telephone, and electronic means, including but not limited to e-mail, in response to this Invitation for Bids will not be acceptable.

**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. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.

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

BIDDER:	FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO (800)
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO BIDDERS ITEM #21):		
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

Offer valid for 45 days from date of bid opening unless otherwise stated here: \_\_\_\_ days (See Instructions to Bidders, Item 6).

Prompt Payment Discount: \_\_\_\_\_ % \_\_\_\_\_ days (See Instructions to Bidders, Item 7).

### **ACCEPTANCE OF BID**

If any or all parts of this bid are accepted, an authorized representative of                      shall affix their signature hereto and this document and the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the North Carolina General Contract Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful bidder(s).

<b><u>FOR                      USE ONLY</u></b>  Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification,  by _____ (Authorized representative of _____).
--

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

**It is desirable that all responses meet the following requirements:**

- All copies are printed **double sided**.
- All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
- Unless absolutely necessary, all bids and copies should **minimize or eliminate use of non-recyclable or non re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.

**MAILING INSTRUCTIONS:** Mail only one fully executed bid document, unless otherwise instructed, and only one bid per envelope. Address envelope and insert bid number as shown below. It is the responsibility of the bidder to have the bid in this office by the specified time and date of opening.

<b><u>DELIVERED BY US POSTAL SERVICE</u></b>	<b><u>DELIVERED BY ANY OTHER MEANS</u></b>
BID NO. _____	BID NO. _____

**TABULATIONS:** The Division has implemented an Interactive Purchasing System (IPS) that allows the public to retrieve bid tabulations electronically from our Internet web site: <http://www.state.nc.us/pandc/>. Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after opening. Lengthy tabulations may not be available on the Internet, and requests for these verbally or in writing cannot be honored.

**VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on our Internet web site: <http://www.state.nc.us/pandc/>.

**TRANSPORTATION CHARGES:**

**ATTENTION:** This is an e-procurement solicitation. See paragraph #19 of the attached General Contract Terms and Conditions.

The Terms and Conditions made part of this solicitation contain new language necessary for implementation of North Carolina's Statewide e-procurement initiative.

It is the offeror's responsibility to read these terms and conditions carefully and consider them in preparing the offer. By signature offeror acknowledges acceptance of all terms and conditions, including those related to e-procurement.

General information on the e-procurement service can be found at: <http://eprocurement.ncgov.com/>

Replace this message by entering your free text here.

## INSTRUCTIONS TO BIDDERS

1. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the North Carolina General Contract Terms and Conditions.  
objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**  
By execution and delivery of this document, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
  - **BIDDER:** Company, firm, corporation, partnership, individual, etc., submitting a response to an Invitation for Bids.
  - **TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities only.
  - **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies, unless exempted by statute, rule, or special term and condition specific to this bid.
  - **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.
  - **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.
4. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.
5. **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) North Carolina General Contract Terms and Conditions, and (4) Instructions to Bidders.
6. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, bidder's offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
7. **PROMPT PAYMENT DISCOUNTS:** Bidders 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.
8. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
10. **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 purchasers those products or packaging they offer which have recycled content and that are recyclable.
11. **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. The bidder 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.
12. **ACCEPTANCE AND REJECTION:** reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, 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.
13. **REFERENCES:** reserves the right to require a list of users of the exact item offered. may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.

14. **TAXES:**
- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
  - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
15. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by to be pertinent or peculiar to the purchase in question. Unless otherwise specified by or the bidder, reserves the right to accept any item or group of items on a multi-item bid.
- In addition, on TERM CONTRACTS, 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 to be pertinent or peculiar to the purchase in question.
16. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, 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.
17. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, the will consider keeping trade secrets which the bidder does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
18. **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 bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become property. Each individual sample must be labeled with the bidder'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.
19. **PROTEST PROCEDURES:** When a bidder wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When a bidder wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific 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.state.nc.us/pandc/>. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.doa.state.nc.us/PandC/protests.pdf> for more information.)
20. **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.
21. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident bidders. The "Principal Place of Business" is defined as the principal place from which the trade or business of the bidder is directed or managed.

## NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

1. **DEFAULT AND PERFORMANCE BOND:** In case of default by the contractor, \_\_\_\_\_ may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby. \_\_\_\_\_ reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to \_\_\_\_\_.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business with the State.

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. \_\_\_\_\_ reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.

G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

5. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
7. **INSPECTION AT CONTRACTOR'S SITE:** \_\_\_\_\_ reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for \_\_\_\_\_ determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
8. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
9. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
10. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
11. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

12. **PATENT:** The contractor shall hold and save \_\_\_\_\_, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.
13. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the State of North Carolina as part of any commercial advertising.
14. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
15. **ASSIGNMENT:** No assignment of the contractor's obligations nor the contractor's right to receive payment hereunder shall be permitted.  
However, upon written request approved by the issuing purchasing authority and solely as a convenience to the contractor, may:  
a. Forward the contractor's payment check directly to any person or entity designated by the contractor, and  
b. Include any person or entity designated by contractor as a joint payee on the contractor's payment check.  
In no event shall such approval and action obligate the State to anyone other than the contractor and the contractor shall remain responsible for fulfillment of all contract obligations.
16. **INSURANCE:**  
**COVERAGE** - During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:  
a. **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.  
b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)  
c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.  
**REQUIREMENTS:** Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.
17. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
18. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
19. **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 contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

**THE SUCCESSFUL BIDDER(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 not be stated or included as a separate item on the invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract. Contractor 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 contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

Contractor 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 Contractor 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 Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor 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, contractor 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 Contractor. If payment of the transaction fee 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 contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

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 contractor 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.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor 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 contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

20. **ELECTRONIC PROCUREMENT (APPLIES ONLY TO STATEWIDE TERM CONTRACTS):** Within ten (10) calendar days of notice, the contractor shall provide supplier information, contract pricing and other product-related information requested by the State or the Supplier Manager. This information shall include such information as contractor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information properly requested by the State or the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the contractor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to use, reproduce, transmit, distribute and publicly display this information. In addition, for the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display contractor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with contractor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the contractor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

If the contractor is not the manufacturer, then it shall be the contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the contractor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

**CONTRACTOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ITS AUTHORIZED RESELLERS IN THE EVENT THAT THE AUTHORIZED RESELLER(S) DEFAULTS.**

21. **CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least 90 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving 30 days prior notice in writing to the other party.
22. **QUANTITIES (TERM CONTRACTS ONLY):** The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.
23. **PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the contractor to other customers.
- a. **Notification:** Must be given to \_\_\_\_\_, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
  - b. **Decreases:** \_\_\_\_\_ shall receive full proportionate benefit immediately at any time during the contract period.
  - c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with \_\_\_\_\_ reserving the right to accept or reject the increase, or cancel the contract. Such action by \_\_\_\_\_ shall occur not later than 15 days after the receipt by \_\_\_\_\_ of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
  - d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

5/02/2005

## Invitation for Bids (IFB) - (E-Procurement Not Applicable)

	<b>INVITATION FOR BIDS NO.</b> Bids will be publicly opened: Contract Type:
<b>Refer <u>ALL</u> Inquiries to:</b> Telephone No.                      Ext.	Commodity:
E-Mail:	Using Agency Name:
<b>(See page 2 for mailing instructions.)</b>	Agency Requisition No.

**NOTICE TO BIDDERS**: Sealed bids, subject to the conditions made a part hereof, will be received at this office (            ) until            on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Refer to page 2 for proper mailing instructions. Bids submitted via telegraph, facsimile (FAX) machine, telephone, and electronic means, including but not limited to e-mail, in response to this Invitation for Bids will not be acceptable.

**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. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.

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

BIDDER:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO (800)
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO BIDDERS ITEM #21):			
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for 45 days from date of bid opening unless otherwise stated here: \_\_\_\_ days (See Instructions to Bidders, Item 6). Prompt Payment Discount: \_\_\_\_ % \_\_\_\_ days (See Instructions to Bidders, Item 7).

**ACCEPTANCE OF BID**: If any or all parts of this bid are accepted, an authorized representative of            shall affix their signature hereto and this document and the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the North Carolina General Contract Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful bidder(s).

<b>FOR</b>	<b>USE ONLY</b>
Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification, by _____ (Authorized representative of            ).	

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

**It is desirable that all responses meet the following requirements:**

- All copies are printed **double sided**.
- All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
- Unless absolutely necessary, all bids and copies should **minimize or eliminate use of non-recyclable or non re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.

**MAILING INSTRUCTIONS:** Mail only one fully executed bid document, unless otherwise instructed, and only one bid per envelope. Address envelope and insert bid number as shown below. It is the responsibility of the bidder to have the bid in this office by the specified time and date of opening.

<b><u>DELIVERED BY US POSTAL SERVICE</u></b>	<b><u>DELIVERED BY ANY OTHER MEANS</u></b>
BID NO. _____	BID NO. _____

**TABULATIONS:** The Division has implemented an Interactive Purchasing System (IPS) that allows the public to retrieve bid tabulations electronically from our Internet web site: <http://www.state.nc.us/pandc/>. Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after opening. Lengthy tabulations may not be available on the Internet, and requests for these verbally or in writing cannot be honored.

**VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on our Internet web site: <http://www.state.nc.us/pandc/>.

### **TRANSPORTATION CHARGES:**

**ATTENTION: This contract is not included in e-procurement. Paragraphs #19 and #20 of the North Carolina General Contract Terms and Conditions do NOT apply.**

Replace this message by entering your free text here.

### **INSTRUCTIONS TO BIDDERS**

22. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
23. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the North Carolina General Contract Terms and Conditions.
 

objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**

By execution and delivery of this document, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
24. **DEFINITIONS:**
  - **BIDDER:** Company, firm, corporation, partnership, individual, etc., submitting a response to an Invitation for Bids.
  - **TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities only.

- **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies, unless exempted by statute, rule, or special term and condition specific to this bid.
  - **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.
  - **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.
25. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.
  26. **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) North Carolina General Contract Terms and Conditions, and (4) Instructions to Bidders.
  27. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, bidder's offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
  28. **PROMPT PAYMENT DISCOUNTS:** Bidders 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.
  29. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
  30. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
  31. **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 purchasers those products or packaging they offer which have recycled content and that are recyclable.
  32. **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. The bidder 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.
  33. **ACCEPTANCE AND REJECTION:** reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, 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.
  34. **REFERENCES:** reserves the right to require a list of users of the exact item offered. may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.
  35. **TAXES:**
    - **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
    - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
  36. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by to be pertinent or peculiar to the purchase in question. Unless otherwise specified by or the bidder, reserves the right to accept any item or group of items on a multi-item bid.  
In addition, on TERM CONTRACTS, 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 to be pertinent or peculiar to the purchase in question.

37. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, 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.
38. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, the will consider keeping trade secrets which the bidder does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
39. **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 bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become property. Each individual sample must be labeled with the bidder'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.
40. **PROTEST PROCEDURES:** When a bidder wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When a bidder wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific 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.state.nc.us/pandc/>. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.doa.state.nc.us/PandC/protests.pdf> for more information.)
41. **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.
42. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident bidders. The "Principal Place of Business" is defined as the principal place from which the trade or business of the bidder is directed or managed.

## NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

20. **DEFAULT AND PERFORMANCE BOND:** In case of default by the contractor, \_\_\_\_\_ may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby. \_\_\_\_\_ reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to \_\_\_\_\_.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business with the State.

21. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. \_\_\_\_\_ reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
22. **AVAILABILITY OF FUNDS:** Any and all payments to the contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
23. **TAXES:** Any applicable taxes shall be invoiced as a separate item.

G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

24. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
25. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
26. **INSPECTION AT CONTRACTOR'S SITE:** \_\_\_\_\_ reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for \_\_\_\_\_ determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
27. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
28. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
29. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
30. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

31. **PATENT:** The contractor shall hold and save \_\_\_\_\_, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.
32. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the State of North Carolina as part of any commercial advertising.
33. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
34. **ASSIGNMENT:** No assignment of the contractor's obligations nor the contractor's right to receive payment hereunder shall be permitted.  
However, upon written request approved by the issuing purchasing authority and solely as a convenience to the contractor, may:  
a. Forward the contractor's payment check directly to any person or entity designated by the contractor, and  
b. Include any person or entity designated by contractor as a joint payee on the contractor's payment check.  
In no event shall such approval and action obligate the State to anyone other than the contractor and the contractor shall remain responsible for fulfillment of all contract obligations.
35. **INSURANCE:**  
**COVERAGE** - During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:  
a. **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.  
b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)  
c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.  
**REQUIREMENTS:** Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.
36. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
37. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
38. **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 contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

**THE SUCCESSFUL BIDDER(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 not be stated or included as a separate item on the invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract.

Contractor 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 contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

Contractor 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 Contractor 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 Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor 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, contractor 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 Contractor. If payment of the transaction fee 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 contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

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 contractor 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.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor 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 contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

24. **ELECTRONIC PROCUREMENT (APPLIES ONLY TO STATEWIDE TERM CONTRACTS):** Within ten (10) calendar days of notice, the contractor shall provide supplier information, contract pricing and other product-related information requested by the State or the Supplier Manager. This information shall include such information as contractor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information properly requested by the State or the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the contractor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to use, reproduce, transmit, distribute and publicly display this information. In addition, for the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display contractor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with contractor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the contractor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

If the contractor is not the manufacturer, then it shall be the contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the contractor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

**CONTRACTOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ITS AUTHORIZED RESELLERS IN THE EVENT THAT THE AUTHORIZED RESELLER(S) DEFAULTS.**

25. **CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least 90 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving 30 days prior notice in writing to the other party.
26. **QUANTITIES (TERM CONTRACTS ONLY):** The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.

27. **PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the contractor to other customers.
- a. **Notification:** Must be given to \_\_\_\_\_, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
  - b. **Decreases:** \_\_\_\_\_ shall receive full proportionate benefit immediately at any time during the contract period.
  - c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with \_\_\_\_\_ reserving the right to accept or reject the increase, or cancel the contract. Such action by \_\_\_\_\_ shall occur not later than 15 days after the receipt by \_\_\_\_\_ of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
  - d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

5/02/2005

## Request for Quote (RFQ) (E-Procurement)

	<b>REQUEST FOR QUOTES NO. Q</b> Quotes will be publicly opened: Contract Type:
<b>Refer <u>ALL</u> Inquiries to:</b> Telephone No.                      Ext.	Commodity:
E-Mail:	Using Agency Name:
<b>(See page 2 for mailing instructions.)</b>	Agency Requisition No.

**NOTICE TO OFFEROR:** Quotes, subject to the conditions made a part hereof, will be received at this office (       ) until       on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Refer to page 2 for proper mailing instructions. Quotes are subject to rejection unless submitted on this form.

**EXECUTION:** In compliance with this Request for Quotes, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are offered, at the prices set opposite each item within the time specified herein. By executing this offer, I certify that this quote is submitted competitively and without collusion, that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.

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

OFFEROR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO (800)
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

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

### **ACCEPTANCE OF QUOTE**

If any or all parts of this quote are accepted, an authorized representative of       shall affix their signature hereto and this document and the provisions of the Instructions for Quotes, special terms and conditions specific to this Request for Quotes, the specifications, and the North Carolina General Contract Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful offeror.

<b><u>FOR</u></b>	<b><u>USE ONLY</u></b>
Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification,	
by _____ (Authorized representative of       ).	

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

**It is desirable that all responses meet the following requirements:**

- All copies are printed **double sided**.
- All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
- Unless absolutely necessary, all bids and copies should **minimize or eliminate use of non-recyclable or non re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.

**MAILING INSTRUCTIONS:** Mail only one fully executed quote document, unless otherwise instructed, and only one quote per envelope. Address envelope and insert quote number as shown below: It is the responsibility of the offeror to have the quote in this office by the specified time and date of opening.

<b><u>DELIVERED BY US POSTAL SERVICE</u></b>	<b><u>DELIVERED BY ANY OTHER MEANS</u></b>
QUOTE NO. Q _____	QUOTE NO. Q _____

**TABULATIONS:** Verbal tabulations of quotes and award information can be obtained by calling the purchaser listed on the first page of this document.

**TRANSPORTATION CHARGES:**

**ATTENTION:** This is an e-procurement solicitation. See paragraph #19 of the attached General Contract Terms and Conditions.

The Terms and Conditions made part of this solicitation contain new language necessary for implementation of North Carolina's Statewide e-procurement initiative.

It is the offeror's responsibility to read these terms and conditions carefully and consider them in preparing the offer. By signature offeror acknowledges acceptance of all terms and conditions, including those related to e-procurement.

General information on the e-procurement service can be found at: <http://eprocurement.ncgov.com/>

Replace this message by entering your free text here.

**INSTRUCTIONS FOR QUOTES**

1. **READ, REVIEW AND COMPLY:** It shall be the offeror's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO OFFERORS:** All quotes are subject to the provisions of the Instructions for Quotes, special terms and conditions specific to this Request for Quotes, the specifications, and the North Carolina General Contract Terms and Conditions.  
objects to and will not evaluate or consider any additional terms and conditions submitted with a quote. This applies to any language appearing in or attached to the document as part of the offeror's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**  
By execution and delivery of this document, the offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
  - **OFFEROR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a Request for Quotes.
  - **TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified

period

of time based on estimated quantities only.

- **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies, unless exempted by statute, rule, or special term and

condition specific to this quote.

- **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.

- **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.

4. **EXECUTION:** Failure to sign under EXECUTION section will render quote invalid.
5. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of quote opening. Preference may be given to quotes allowing not less than 45 days for consideration and acceptance.
6. **PROMPT PAYMENT DISCOUNTS:** Offerors 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. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and offeror will be held responsible therefore. Deviations shall be explained in detail. **The offeror shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable**
8. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this quote, the order of precedence shall be (1) special terms and conditions specific to this quote, (2) specifications, (3) North Carolina General Contract Terms and Conditions, and (4) Instructions for Quotes.
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Offeror is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this quote, each offeror must submit with their quote sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous offer will not satisfy this provision. Quotes which do not comply with these requirements will be subject to rejection.
10. **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 purchasers those products or packaging they offer which have recycled content and that are recyclable.
11. **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. The offeror is cautioned that the requirements of this quote can be altered only by written addendum and that verbal communications from whatever source are of no effect.
12. **ACCEPTANCE AND REJECTION:** reserves the right to reject any and all quotes, to waive any informality in quotes and, unless otherwise specified by the offeror, to accept any item in the quote. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
13. **REFERENCES:** reserves the right to require a list of users of the exact item offered. may contact these users to determine acceptability of the quote. Such information may be considered in the evaluation of the quote.
14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, 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.
15. **AWARD OF CONTRACT:** Qualified quotes will be evaluated and acceptance may be made of the lowest and best quote most advantageous to as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the offerors; the substantial conformity with the specifications and other conditions set forth in the quote; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by to be pertinent or peculiar to the purchase in question. Unless otherwise specified by or the offeror, reserves the right to accept any item or group of items on a multi-item quote.  
In addition, on TERM CONTRACTS, 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 to be pertinent or peculiar to the purchase in question.

16. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, \_\_\_\_\_ will consider keeping trade secrets which the offeror does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the offeror. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
17. **TAXES:**
- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
  - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by \_\_\_\_\_ the North Carolina Department of Revenue.
18. **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 offeror's expense. Request for the return of samples must be made within 10 days following date of quote opening. Otherwise the samples will become \_\_\_\_\_ property. Each individual sample must be labeled with the offeror's name, quote 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.
19. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When an offeror wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific 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. Offerors may call the purchaser named in this document to obtain a verbal status of contract award. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.doa.state.nc.us/PandC/protests.pdf> for more information.)
20. **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.

#### **NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS**

39. **DEFAULT AND PERFORMANCE BOND:** In case of default by the contractor, \_\_\_\_\_ may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby. \_\_\_\_\_ reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to \_\_\_\_\_.
- In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.
- Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business with the State.
40. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. \_\_\_\_\_ reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
41. **AVAILABILITY OF FUNDS:** Any and all payments to the contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
42. **TAXES:** Any applicable taxes shall be invoiced as a separate item.

G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3)

Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

43. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
44. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
45. **INSPECTION AT CONTRACTOR'S SITE:** reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
46. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
47. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
48. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
49. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.
50. **PATENT:** The contractor shall hold and save , its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.
51. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the State of North Carolina as part of any commercial advertising.
52. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
53. **ASSIGNMENT:** No assignment of the contractor's obligations nor the contractor's right to receive payment hereunder shall be permitted.  
However, upon written request approved by the issuing purchasing authority and solely as a convenience to the contractor, may:
  - a. Forward the contractor's payment check directly to any person or entity designated by the contractor, and
  - b. Include any person or entity designated by contractor as a joint payee on the contractor's payment check.In no event shall such approval and action obligate the State to anyone other than the contractor and the contractor shall remain responsible for fulfillment of all contract obligations.
54. **INSURANCE:**  
**COVERAGE** - During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:
  - a. **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
  - b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
  - c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

**REQUIREMENTS:** Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

55. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
56. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
57. **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 contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

**THE SUCCESSFUL BIDDER(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 not be stated or included as a separate item on the invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract. Contractor 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 contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

Contractor 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 Contractor 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 Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor 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, contractor 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 Contractor. If payment of the transaction fee 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 contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

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 contractor 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.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor 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 contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

28. **ELECTRONIC PROCUREMENT (APPLIES ONLY TO STATEWIDE TERM CONTRACTS):** Within ten (10) calendar days of notice, the contractor shall provide supplier information, contract pricing and other product-related information requested by the State or the Supplier Manager. This information shall include such information as contractor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information properly requested by the State or the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the contractor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to use, reproduce, transmit, distribute and publicly display this information. In addition, for the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display contractor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with contractor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the contractor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

If the contractor is not the manufacturer, then it shall be the contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the contractor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

**CONTRACTOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ITS AUTHORIZED RESELLERS IN THE EVENT THAT THE AUTHORIZED RESELLER(S) DEFAULTS.**

29. **CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least 90 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving 30 days prior notice in writing to the other party.
30. **QUANTITIES (TERM CONTRACTS ONLY):** The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.
31. **PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the contractor to other customers.
- Notification:** Must be given to \_\_\_\_\_, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
  - Decreases:** \_\_\_\_\_ shall receive full proportionate benefit immediately at any time during the contract period.
  - Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with \_\_\_\_\_ reserving the right to accept or reject the increase, or cancel the contract. Such action by \_\_\_\_\_ shall occur not later than 15 days after the receipt by \_\_\_\_\_ of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
  - Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

5/02/2005

## Request for Quote (RFQ) (E-Procurement Not Applicable)

	<b>REQUEST FOR QUOTES NO. Q</b>
	Quotes will be publicly opened:
	Contract Type:
<b>Refer <u>ALL</u> Inquiries to:</b> Telephone No.                      Ext.	Commodity:
E-Mail:	Using Agency Name:
<b>(See page 2 for mailing instructions.)</b>	Agency Requisition No.

**NOTICE TO OFFEROR:** Quotes, subject to the conditions made a part hereof, will be received at this office (        ) until        on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Refer to page 2 for proper mailing instructions. Quotes are subject to rejection unless submitted on this form.

**EXECUTION:** In compliance with this Request for Quotes, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are offered, at the prices set opposite each item within the time specified herein. By executing this offer, I certify that this quote is submitted competitively and without collusion, that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.

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

OFFEROR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO (800)
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

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

### **ACCEPTANCE OF QUOTE**

If any or all parts of this quote are accepted, an authorized representative of        shall affix their signature hereto and this document and the provisions of the Instructions for Quotes, special terms and conditions specific to this Request for Quotes, the specifications, and the North Carolina General Contract Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful offeror.

<b><u>FOR        USE ONLY</u></b>
Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification,
by _____ (Authorized representative of        ).

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

**It is desirable that all responses meet the following requirements:**

- All copies are printed **double sided**.
- All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
- Unless absolutely necessary, all bids and copies should **minimize or eliminate use of non-recyclable or non re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.

**MAILING INSTRUCTIONS:** Mail only one fully executed quote document, unless otherwise instructed, and only one quote per envelope. Address envelope and insert quote number as shown below: It is the responsibility of the offeror to have the quote in this office by the specified time and date of opening.

<b><u>DELIVERED BY US POSTAL SERVICE</u></b>	<b><u>DELIVERED BY ANY OTHER MEANS</u></b>
QUOTE NO. Q _____	QUOTE NO. Q _____

**TABULATIONS:** Verbal tabulations of quotes and award information can be obtained by calling the purchaser listed on the first page of this document.

**TRANSPORTATION CHARGES:**

**ATTENTION: This contract is not included in e-procurement. Paragraphs #19 and #20 of the North Carolina General Contract Terms and Conditions do NOT apply.**

Replace this message by entering your free text here.

**INSTRUCTIONS FOR QUOTES**

21. **READ, REVIEW AND COMPLY:** It shall be the offeror's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
22. **NOTICE TO OFFERORS:** All quotes are subject to the provisions of the Instructions for Quotes, special terms and conditions specific to this Request for Quotes, the specifications, and the North Carolina General Contract Terms and Conditions.  
objects to and will not evaluate or consider any additional terms and conditions submitted with a quote. This applies to any language appearing in or attached to the document as part of the offeror's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**  
By execution and delivery of this document, the offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
23. **DEFINITIONS:**
  - **OFFEROR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a Request for Quotes.
  - **TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities only.
  - **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies, unless exempted by statute, rule, or special term and condition specific to this quote.
  - **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.
  - **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.
24. **EXECUTION:** Failure to sign under EXECUTION section will render quote invalid.

25. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of quote opening. Preference may be given to quotes allowing not less than 45 days for consideration and acceptance.
26. **PROMPT PAYMENT DISCOUNTS:** Offerors 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.
27. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and offeror will be held responsible therefore. Deviations shall be explained in detail. **The offeror shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable**
28. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this quote, the order of precedence shall be (1) special terms and conditions specific to this quote, (2) specifications, (3) North Carolina General Contract Terms and Conditions, and (4) Instructions for Quotes.
29. **INFORMATION AND DESCRIPTIVE LITERATURE:** Offeror is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this quote, each offeror must submit with their quote sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous offer will not satisfy this provision. Quotes which do not comply with these requirements will be subject to rejection.
30. **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 purchasers those products or packaging they offer which have recycled content and that are recyclable.
31. **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. The offeror is cautioned that the requirements of this quote can be altered only by written addendum and that verbal communications from whatever source are of no effect.
32. **ACCEPTANCE AND REJECTION:** reserves the right to reject any and all quotes, to waive any informality in quotes and, unless otherwise specified by the offeror, to accept any item in the quote. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
33. **REFERENCES:** reserves the right to require a list of users of the exact item offered. may contact these users to determine acceptability of the quote. Such information may be considered in the evaluation of the quote.
34. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, 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.
35. **AWARD OF CONTRACT:** Qualified quotes will be evaluated and acceptance may be made of the lowest and best quote most advantageous to as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the offerors; the substantial conformity with the specifications and other conditions set forth in the quote; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by to be pertinent or peculiar to the purchase in question. Unless otherwise specified by or the offeror, reserves the right to accept any item or group of items on a multi-item quote. In addition, on TERM CONTRACTS, 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 to be pertinent or peculiar to the purchase in question.
36. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, will consider keeping trade secrets which the offeror does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the offeror. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
37. **TAXES:**
- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.

- **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
38. **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 offeror's expense. Request for the return of samples must be made within 10 days following date of quote opening. Otherwise the samples will become \_\_\_\_\_ property. Each individual sample must be labeled with the offeror's name, quote 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.
  39. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When an offeror wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific 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. Offerors may call the purchaser named in this document to obtain a verbal status of contract award. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.doa.state.nc.us/PandC/protests.pdf> for more information.)
  40. **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.

#### NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

58. **DEFAULT AND PERFORMANCE BOND:** In case of default by the contractor, \_\_\_\_\_ may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby. \_\_\_\_\_ reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to \_\_\_\_\_.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business with the State.

59. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. \_\_\_\_\_ reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
60. **AVAILABILITY OF FUNDS:** Any and all payments to the contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
61. **TAXES:** Any applicable taxes shall be invoiced as a separate item.  
  
G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
62. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
63. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.

64. **INSPECTION AT CONTRACTOR'S SITE:** reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
65. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
66. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
67. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
68. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.
69. **PATENT:** The contractor shall hold and save , its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.
70. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the State of North Carolina as part of any commercial advertising.
71. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
72. **ASSIGNMENT:** No assignment of the contractor's obligations nor the contractor's right to receive payment hereunder shall be permitted.  
However, upon written request approved by the issuing purchasing authority and solely as a convenience to the contractor, may:  
a. Forward the contractor's payment check directly to any person or entity designated by the contractor, and  
b. Include any person or entity designated by contractor as a joint payee on the contractor's payment check.  
In no event shall such approval and action obligate the State to anyone other than the contractor and the contractor shall remain responsible for fulfillment of all contract obligations.
73. **INSURANCE:**  
**COVERAGE** - During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:  
a. **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.  
b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)  
c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.  
**REQUIREMENTS:** Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

74. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
75. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
76. **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 contractor 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.

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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 contractor 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.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor 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 contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

32. **ELECTRONIC PROCUREMENT (APPLIES ONLY TO STATEWIDE TERM CONTRACTS):** Within ten (10) calendar days of notice, the contractor shall provide supplier information, contract pricing and other product-related information requested by the State or the Supplier Manager. This information shall include such information as contractor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information properly requested by the State or the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the contractor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its

agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to use, reproduce, transmit, distribute and publicly display this information. In addition, for the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display contractor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with contractor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the contractor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

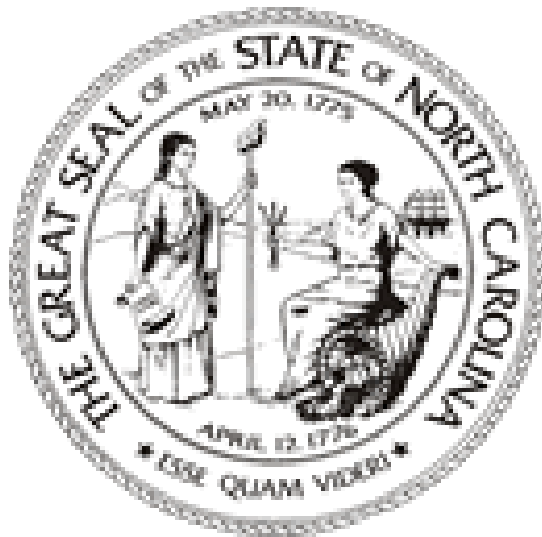
If the contractor is not the manufacturer, then it shall be the contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the contractor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

**CONTRACTOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ITS AUTHORIZED RESELLERS IN THE EVENT THAT THE AUTHORIZED RESELLER(S) DEFAULTS.**

33. **CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least 90 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving 30 days prior notice in writing to the other party.
34. **QUANTITIES (TERM CONTRACTS ONLY):** The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.
35. **PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the contractor to other customers.
  - a. **Notification:** Must be given to \_\_\_\_\_, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
  - b. **Decreases:** \_\_\_\_\_ shall receive full proportionate benefit immediately at any time during the contract period.
  - c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with \_\_\_\_\_ reserving the right to accept or reject the increase, or cancel the contract. Such action by \_\_\_\_\_ shall occur not later than 15 days after the receipt by \_\_\_\_\_ of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
  - d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

5/02/2005

# State IT Procurement Forms



## Request for Quote

<b>STATE OF NORTH CAROLINA</b> <b>Information Technology Services</b>	<b>REQUEST FOR QUOTES NO. _____</b> Quotes will be publicly opened: Contract Type: <b>(Open Market/Agency Specific)</b>
<i>Refer <u>ALL</u> Inquiries to:</i> Telephone No. FAX: E-Mail:	Issue Date: Commodity: Using Agency Name:
<b>(See page 2 for mailing instructions.)</b>	Agency Requisition:

### **NOTICE TO VENDOR**

Quotes, subject to the conditions made a part hereof, will be received at this office at \_\_\_\_\_ until \_\_\_\_\_ **a.m./p.m.** on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Refer to page 2 for proper mailing instructions. Quotes are subject to rejection unless submitted on this form.

### **EXECUTION**

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

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

VENDOR:	FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

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

### **ACCEPTANCE OF QUOTE**

If any or all parts of this quote are accepted, an authorized representative of (agency) shall affix their signature hereto and this document and the provisions of the Instructions to Vendors, special terms and conditions specific to this Request for Quotes, 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 ITS USE ONLY**

Offer accepted and contract awarded this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, as indicated on attached certification,  
by \_\_\_\_\_ (Authorized representative of [agency]).

**DELIVERY INSTRUCTIONS:** Deliver only one fully executed quote document, unless otherwise instructed and only one quote per envelope. Address envelope and insert quote number as shown below. It is the responsibility of the Vendor to have the quote in this office by the specified time and date of opening.

<b><u>DELIVERED BY US POSTAL SERVICE</u></b>	<b><u>DELIVERED BY ANY OTHER MEANS</u></b>
QUOTE NO. _____ (Agency) ATTN: PO BOX CITY, STATE, ZIP	QUOTE NO. _____ (Agency) ATTN: STREET ADDRESS CITY, STATE, ZIP

**INTENT:** The purpose of this Request for Quote (RFQ) is to obtain pricing for \_\_ (insert intent of quote) \_\_ for \_\_ (agency) \_\_. Products and services will be provided in accordance to the terms and conditions of this RFQ. Vendor will be required to offer a complete line of products to support the requirements listed in this RFQ.

**VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.:** In accordance with Executive Order #60, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers located outside of the United States. 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 outside of the United States:

- a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract
- 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

**E-PROCUREMENT:** This is an e-procurement solicitation. See paragraph #47 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services.

*The Terms and Conditions made part of this solicitation contain new 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.*

*General information on the e-procurement service can be found at <http://eprocurement.ncgov.com>*

**TABULATIONS:** Verbal tabulations of quotes and award information can be obtained by calling the purchaser listed on the first page of this document, after the closing date.

**DELIVERY:** Successful Vendor will complete delivery within thirty (30) consecutive calendar days after receipt of purchase order to \_\_\_\_\_, NC. State your guaranteed delivery date:

Delivery will be made from \_\_\_\_\_ within \_\_\_\_\_ consecutive days after receipt of order.

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

**OUTSOURCED SERVICES:** The vendor must notify the Agency if any jobs related to the services offered in the proposal are to be outsourced to others countries. Include this information in your bid response.

**BID EVALUATION:** Bids are requested on the items and/or equipment as hereinafter specified or like items similar in design, function and performance. The State reserves the right to reject any bid on the basis of function, compatibility with user requirements and/or costs. Vendors are cautioned that any/all information furnished or not furnished on this bid may be used as a factor in determining the award of this contract.

**AWARD CRITERIA:** Qualified bids will be evaluated and acceptance made in accordance with the lowest price technically acceptable source selection method as defined by 9 NCAC 06B .0302 (3).

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

**EQUIPMENT:** Any equipment offered must be new, and must be maintained and kept in good working order for the duration of the contract. If during the contract period, equipment: proves to be defective or unsatisfactory to such an extent that an unreasonable number of service calls are required, the contractor may be required to promptly replace such equipment with acceptable equipment at no additional cost to the State.

**FURNISH AND DELIVER:**

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1					
2					
3					
4					

**Total Bid Cost** \_\_\_\_\_

Specify warranty length and type:

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Item(s) offered in response to this solicitation contain recycled content?

Yes

No

If applicable, please indicate recycled content of each item.

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**ITS INSTRUCTIONS TO VENDORS**

**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.

**DEFINITIONS:**

- **THE STATE:** Is the state of North Carolina and its agencies.
- **ITS:** Office of Information Technology Services
- **VENDOR:** 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.

**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.

**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.

**TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer shall be valid for 45 days from the date of bid opening.

**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.

**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. Reference to literature submitted with a previous bid will not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.

**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.

**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.

**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.

**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.

**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.

**PROTEST PROCEDURES:** When Vendor wants to protest a contract awarded pursuant to this solicitation, that is over \$10,000, 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 handled pursuant to Title 9, North Carolina Administrative Code, Chapter 6, Office of Information Technology Services.**

**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.

## **ITS Terms and Conditions**

**Definitions:** As used herein;

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.

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or services.

**1) Standards:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and

**2)** maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or federal Regulation,
- by the Chief Information Officer's (CIO) policy or regulation, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

a) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.

b) **Goods Return:** Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense. The State is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the Vendor or delivery of non-conforming goods by Vendor. Shipping or freight charges, if any, paid by the State for non-conforming goods will be reimbursed to the State.

c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

**3) Warranties:** Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.

**4) Personnel:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract services provided by such personnel.

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

**6) Vendor's Representation:** Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

**7) Software License (*for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto*):** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.

**8) Maintenance/Support Services:** *Unless otherwise provided in the State's solicitation document, or in an attachment hereto*, for the first year and all subsequent Contract years, Vendor agrees to provide the following services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:

- a) Error Correction. Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the

Program. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance services under this Paragraph.

b) Vendor shall notify the State of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.

c) Updates. Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.

d) Telephone Assistance. Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.

**9) Travel Expenses:** Vendor may be reimbursed for travel expenses arising under the performance of this Contract 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 Contract.

**10) Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate Vendor for sums due under the Contract.

**11) 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. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.

**12) Availability of Funds:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract 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 Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency under this Contract, and relieve the

Agency of any further obligation thereof. The State shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

**13) Payment Terms:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
- b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

**14) Acceptance Criteria:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

**15) Equal Employment Opportunity:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

**16) Inspection at Vendor's Site:** The State reserves the right to inspect, during Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.

**17) Advertising/Press Release:** The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

**18) Confidentiality:** In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, 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 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 may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. 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 agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. 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.

- a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.
- b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
- c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

**19) Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods, software, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina and must be kept confidential or returned to the Agency, to ITS procurement, or destroyed as required by the State. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. The State's solicitation document may supplement or substitute this definition and the requirements set forth in this Paragraph. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

**20) Late Delivery, Back Order:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Deliverables or services.

**21) Patent, Copyright, and Trade Secret Protection:**

- a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.
- b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works

thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a United States patent, or copyright or violates a trade secret. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

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

e) 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.

f) Should any services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware 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 Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

g) 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 (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

h) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

**22) 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 Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. 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.

**23) Assignment:** Vendor may not assign this Contract 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 Contract 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 Contract. 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.

**24) Insurance Coverage:** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract ; and

- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

**25) Dispute Resolution:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. 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.

**26) Default:** In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract 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 requirements of Paragraph 14) herein, 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 Paragraphs 29) and 30) and the obligation to informally resolve disputes as provided in Paragraph 25) 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.
- c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

**27) Waiver of Default:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 31)b) hereinbelow.

**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 26), 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 of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to 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 Paragraphs 29) and 30) herein. 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) Limitation of Vendor's Liability:**

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. Provided, however, that the State's Solicitation Documents or the Supplemental Terms and Conditions for Software or Services, if any, may increase Vendor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

**30) Vendor's Liability for Injury to Persons or Damage to Property:**

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

**31) General Indemnity:** The Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Vendor shall be conditioned upon the following:

- a) The Agency shall give Vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
- b) The Vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency or State shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

**32) Changes:** This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

**33) Stop Work Order:** The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Contract for a period up to 90 days after the Stop Work Order is delivered to the Vendor. The 90-day period may be extended for any further period for which the parties may agree.

- a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:
  - i) Cancel the Stop Work Order, or
  - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
  - i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and
  - ii) The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

**34) Price Adjustments For Term Contracts:** Changes in prices or costs quoted by Vendor may be permitted during the term of the Contract, but shall be subject to the requirements of this Paragraph, and any additional terms of the solicitation document. Permitted changes during the Contract period must be general, either by reason of market change, change in manufacturer's list price or price adjustments authorized by Contract.

- a) Notification: Vendor must provide written notification of any proposed pricing change to the Office of Information Technology Services not less than sixty (60) days prior to the desired effective date of any proposed price adjustment. If Vendor is a reseller, MCL, VAR, or other party having a similar relationship with the manufacturer, the notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the price change is general in nature.
- b) Decreases: The State shall receive full proportionate benefit of any decrease immediately upon the effective date at any time during the Contract period.
- c) Increases: All prices and costs shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with the State reserving the right to accept or reject the increase, or cancel the Contract. The State shall exercise this right not later than 30 days after the receipt by of a properly documented request for price increase. Any increases accepted shall become effective not earlier than 30 days after the expiration of the original 30 days reserved to evaluate the request for increase.

**35) Time is of the Essence.** Time is of the essence in the performance of this Contract.

**36) Date and Time Warranty:** The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

**37) Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

**38) Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. 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. A complete packing list must accompany each shipment.

**39) Notices:** Any notices required under this Contract 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 or by hand.

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

**41) Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 32) herein.

**42) 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 Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

**43) Governing Laws, Jurisdiction, and Venue:**

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

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

**44) 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.

**45) 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.

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

**47) 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.

**48) 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.

**48) Electronic Procurement (Applies only to Statewide Term Contracts):** Within fifteen (15) calendar days of notice, the Vendor shall provide supplier information, contract pricing and other product related information requested by the State or the Supplier Manager. This information shall include such information as Vendor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information or properly requested by the State of the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the Vendor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the Vendor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display Vendor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with Vendor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the Vendor within the appropriate

contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

a) If the Vendor is not the manufacturer, then it shall be the Vendor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the Vendor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

b) **Vendor is and shall remain responsible for paying the transaction fee on behalf of its authorized reseller in the event that the authorized reseller defaults.**

## INVITATION for BID for GOODS and SERVICES

<p style="text-align: center;"><b><u>STATE OF NORTH CAROLINA</u></b></p> <p><b><u>Office of Information Technology Services</u></b></p>	<p><b>INVITATION FOR BIDS NO. ITS-00_____</b></p> <p>Bids will be publicly opened:</p> <p>Contract Type: (Open Market/Agency Specific)</p>
<p><b>Refer <u>ALL</u> <u>Inquiries</u> to:</b></p> <p>E-Mail:</p>	<p>Issue Date:</p> <p>Commodity Number:</p> <p>Commodity:</p>
<p>Telephone No.: 919-</p>	<p>Using Agency Name:</p>
<p><b>(See page 2 for mailing instructions.)</b></p>	<p>Agency Requisition No.:</p>

### **NOTICE TO VENDORS**

**Sealed bids**, subject to the conditions made a part hereof, will be received at this office 3512 Bush Street, Raleigh, NC until 2:00 p.m. Eastern Standard Time on the day of opening and then opened, for furnishing and delivering the commodity 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.**

VENDOR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
<b><u>AUTHORIZED SIGNATURE:</u></b>	DATE:	E-MAIL:	

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 (agency) 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 ITS USE ONLY**

Offer accepted and contract awarded this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, as indicated on attached certification,

by \_\_\_\_\_ (Authorized representative of ITS).

**DELIVERY INSTRUCTIONS:** Deliver one (1) **original** executed bid response, and one (1) **duplicate copy**. 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.

<b><u>DELIVERED BY US POSTAL SERVICE</u></b>	<b><u>DELIVERED BY ANY OTHER MEANS</u></b>
<b>BID NO.:</b> Statewide IT Procurement Office Attn: PO Box 17209 Raleigh, NC 27619-7209	<b>BID NO.:</b> Statewide IT Procurement Office Attn: 3512 Bush Street Raleigh, NC 27609

### **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 new e-procurement system. Vendor 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:

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

Address:

Instructions: Written questions will be received at \_\_\_\_\_(email)\_\_\_\_\_ until date and time specified above. Please enter "Questions ITS-00XXXX" as the subject for the email. The State will prepare responses to all written questions submitted, and post an addenda 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 \_\_\_\_\_ 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.

### **Site Visit**

Due Date:

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

Address:

Instructions: Prospective Vendors and/or Vendor representatives are URGED and CAUTIONED to visit the site of the project and apprise themselves of all conditions; which will affect the performance of the work required or reasonable implied by this IFB. A non-mandatory site visit is scheduled for February \_\_, 2004 at \_\_\_\_\_. Interested Vendor should meet at the Receptionist's Desk in the \_\_\_\_\_. This opportunity to visit the site may not be rescheduled unless so authorized by addendum to this IFB. Submission of a bid shall constitute sufficient evidence of this compliance and no allowance will be made for unreported conditions; which a prudent Vendor would recognize as affecting this performance of the work called for in this IFB.

### **Bid Submittal**

Due Date:

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**. 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 Bids (IFB) is to obtain pricing for and select a Vendor to provide \_\_\_\_\_ for the Department \_\_\_\_\_. Bidding will be in accordance with the terms and conditions of this IFB and any addenda thereto.

### **SECTION 3: 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.

*Pursuant to General Statute 143-48 and Executive Order #150, 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.*

**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 located outside of the United States. 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 outside of the United States:*

- e) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract*
- f) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors*
- g) 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*
- h) 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*

### **SECTION 4: E-PROCUREMENT**

**This is an e-procurement solicitation.** See paragraph #47 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services. The Terms and Conditions made part of this solicitation contain new language necessary for the implementation of North Carolina's statewide e-procurement initiative. It is the offeror's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature offeror acknowledges acceptance of all terms and conditions including those related to e-procurement.

General information on the e-procurement service can be found at <http://eprocurement.ncgov.com>

Within two days after notification of award of a contract, Vendor must register in NC E-Procurement @ Your Service.

### **SECTION 5: DELIVERY**

The successful Vendor will complete delivery within thirty -(30) consecutive calendar days after receipt of purchase order to \_\_\_\_\_, NC. State your guaranteed delivery date:

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

### **SECTION 6: WARRANTY**

The Vendor warrants that all equipment furnished under this IFB will be new, of good material and workmanship. The warranty will be for a minimum period of twelve (12) months from date equipment is put into operation. Such

replacement shall include all parts, labor, and transportation cost to the location where equipment is down, free of any charge to the owner or his representative.

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 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.

		(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			

**SECTION 7: MAINTENANCE (OPTIONAL)**

The Vendor must offer at least two additional years of annual maintenance for use after the initial one-year warranty period expires. The State may elect to receive approved provider’s then-current maintenance service upon payment of applicable annual maintenance fees, beginning at the end of the warranty period. Maintenance services may be renewed upon written notice by the State prior to the contract anniversary date. Escalation of annual maintenance fees shall not exceed 5% per year. Any maintenance agreements shall be subject to the terms of this contract. For this period support must be provided 24x7 with a four (4) hour minimum response time. State response time.

Maximum response time to this location after receipt of service call: \_\_\_\_\_ hours

Year 1: Initial Warranty Period plus maintenance and services all included – No Charge

Year 2: \$ \_\_\_\_\_

Year 3: \$ \_\_\_\_\_

Describe in detail services to be covered under the extended maintenance:

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**SECTION 8: 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 9: 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.

## **SECTION 10: POSSESSION AND REVIEW**

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

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

## **SECTION 11: DESCRIPTIVE LITERATURE**

All bids must be accompanied by complete descriptive literature, specifications and other pertinent data necessary for evaluation. Bids that do not comply with this requirement may be subject to rejection.

## **SECTION 12: SPECIFICATIONS**

### **AGENCY TO ADD INFORMATION:**

*Specifications are one of the most important elements of the purchasing process. The preparation of good specifications is probably the most difficult function in the process. Inadequate or poorly written specifications are the cause of many Vendors challenges and can considerably delay the purchasing process*

*The term "specification" refers to a description of the characteristics of a commodity or service. Specifically, it is defined as the explicit requirements, furnished with a solicitation upon which a purchase order or contract is to be based. Specifications set forth the characteristics of the goods and services to be purchased so as to enable the Vendor to determine and understand that; which is to be supplied. This information may be in the form of a description of the physical, functional, or performance characteristics, a reference brand name or both. It may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery. Specifications are written so as to not restrict bidding but encourage open competition. The goal is to invite maximum competition.*

To assure that your specifications meet the above criteria, use the following checklist:

- Specifications should be clear and accurate, yet simple. They should NOT be so specific as to eliminate competition.
- Specifications should be understandable to both the Vendor and the purchaser.
- Specifications should be as flexible as possible. Inflexible specifications defeat the competitive bid process.
- Specifications should be legible and concise.
- Specifications should be verifiable. Specifications that are written in such a way that a product or service offered cannot be verified as meeting specifications is of little value and results in confusion.

**SECTION 13: FURNISH AND DELIVER**

ITEM	QTY.	UOM	DESCRIPTION	UNIT COST	TOTAL EXTENDED COST
1.	1	Each			
2.	1	Each			
3.	1	Each			
4.	1	Year	Maintenance		
			Year 1 – Included at no charge	\$ _____	\$ _____
			Year 2	\$ _____	\$ _____
			Year 3		

**TOTAL COST** \$ \_\_\_\_\_**Miscellaneous**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 <b>Energy Star</b> specifications for energy efficiency?	<b>Yes</b>		<b>No</b>	
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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? \_\_\_\_\_% 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 \_\_\_\_\_

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 14: ITS INSTRUCTIONS TO VENDORS

43. **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.
44. **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.
45. **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.
46. **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.
47. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer shall be valid for 45 days from the date of bid opening.
48. **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.
49. **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. Reference to literature submitted with a previous bid will not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.
50. **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.
51. **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.
52. **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.
53. **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.

54. **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.
55. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation, that is over \$10,000, 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 .1009 - .1029.**
56. **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.

## **SECTION 15: ITS TERMS AND CONDITIONS**

**Definitions:** As used herein;

**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.

**Purchasing State Agency or Agency** shall mean the Agency purchasing the goods or services.

**49) Standards:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or federal Regulation,
- by the Chief Information Officer's (CIO) policy or regulation, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

d) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.

e) **Goods Return:** Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense. The State is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the Vendor or delivery of non-conforming goods by Vendor. Shipping or freight charges, if any, paid by the State for non-conforming goods will be reimbursed to the State.

f) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables.

Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

**50) Warranties:** Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.

**51) Personnel:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract services provided by such personnel.

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

**53) Vendor's Representation:** Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

**54) Software License (*for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto*):** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.

**55) Maintenance/Support Services:** *Unless otherwise provided in the State's solicitation document, or in an attachment hereto*, for the first year and all subsequent Contract years, Vendor agrees to provide the following

services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:

- a) **Error Correction.** Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Program. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance services under this Paragraph.
- b) Vendor shall notify the State of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
- c) **Updates.** Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.
- d) **Telephone Assistance.** Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.

**56) Travel Expenses:** Vendor may be reimbursed for travel expenses arising under the performance of this Contract 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 Contract.

**57) Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate Vendor for sums due under the Contract.

**58) 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. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the bidder(s) or Vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.

**59) Availability of Funds:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract 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 Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation,

allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

**60) Payment Terms:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
- b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

**61) Acceptance Criteria:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

**62) Equal Employment Opportunity:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

**63) Inspection at Vendor's Site:** The State reserves the right to inspect, during Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.

**64) Advertising/Press Release:** The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

**65) Confidentiality:** In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, 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 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 may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. 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 agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. 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.

a) **Care of Information:** Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.

b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

c) **Nondisclosure:** Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

**66) Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods, software, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina and must be kept confidential or returned to the Agency, to ITS procurement, or destroyed as required by the State. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. The State's solicitation document may supplement or substitute this definition and the requirements set forth in this Paragraph. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

**67) Late Delivery, Back Order:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Deliverables or services.

**68) Patent, Copyright, and Trade Secret Protection:**

a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor

hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a United States patent, or copyright or violates a trade secret. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

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

e) 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.

f) Should any services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware 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 Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

g) 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 (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

h) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

**69) 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 Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. 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.

**70) Assignment:** Vendor may not assign this Contract 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 Contract 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 Contract. 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.

**71) Insurance Coverage:** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work

is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and

b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and

d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

**72) Dispute Resolution:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. 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.

**73) Default:** In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract 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 requirements of Paragraph 14) herein, 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 Paragraphs 29) and 30) and the obligation to informally resolve disputes as provided in Paragraph 25) 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.

c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

**74) Waiver of Default:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 31)b) hereinbelow.

**75) 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 26), 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 of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to 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 Paragraphs 29) and 30) herein. 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.

**76) Limitation of Vendor's Liability:**

a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.

b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. Provided, however, that the State's Solicitation Documents or the Supplemental Terms and Conditions for Software or Services, if any, may increase Vendor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.

c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

**77) Vendor's Liability for Injury to Persons or Damage to Property:**

a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.

b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.

c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

**78) General Indemnity:** The Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in

connection with the performance of this Contract. The foregoing indemnification and defense by the Vendor shall be conditioned upon the following:

- a) The Agency shall give Vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
- b) The Vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency or State shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

**79) Changes:** This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

**80) Stop Work Order:** The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Contract for a period up to 90 days after the Stop Work Order is delivered to the Vendor. The 90-day period may be extended for any further period for which the parties may agree.

- a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:
  - i) Cancel the Stop Work Order, or
  - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
  - iii) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and
  - iv) The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- e) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.
- f) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

**81) Price Adjustments For Term Contracts:** Changes in prices or costs quoted by Vendor may be permitted during the term of the Contract, but shall be subject to the requirements of this Paragraph, and any additional terms of the solicitation document. Permitted changes during the Contract period must be general, either by reason of market change, change in manufacturer's list price or price adjustments authorized by Contract.

- a) Notification: Vendor must provide written notification of any proposed pricing change to the Office of Information Technology Services not less than sixty -(60) days prior to the desired effective date of any proposed price adjustment. If Vendor is a reseller, MCL, VAR, or other party having a similar relationship with the manufacturer, the notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the price change is general in nature.
- b) Decreases: The State shall receive full proportionate benefit of any decrease immediately upon the effective date at any time during the Contract period.
- c) Increases: All prices and costs shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with the State reserving the right to accept or reject the increase, or cancel the Contract. The State shall exercise this right not later than 30 days after the receipt by of a properly documented request for price increase. Any increases accepted shall become effective not earlier than 30 days after the expiration of the original 30 days reserved to evaluate the request for increase.

**82) Time is of the Essence.** Time is of the essence in the performance of this Contract.

**83) Date and Time Warranty:** The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

**84) Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

**85) Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. 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. A complete packing list must accompany each shipment.

**86) Notices:** Any notices required under this Contract 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 or by hand.

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

**88) Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 32) herein.

**89) 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 Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

**90) Governing Laws, Jurisdiction, and Venue:**

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

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

**91) 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.

**92) 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.

**93) Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided

otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

**94) 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.

**95) 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.

e) **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.

f) 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.

g) 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.

h) 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.

**49) Electronic Procurement (Applies only to Statewide Term Contracts):** Within fifteen (15) calendar days of notice, the Vendor shall provide supplier information, contract pricing and other product related information requested by the State or the Supplier Manager. This information shall include such information as Vendor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information properly requested by the State of the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the Vendor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the Vendor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display Vendor's trademarks, service marks, logos,

trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with Vendor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the Vendor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

a) If the Vendor is not the manufacturer, then it shall be the Vendor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the Vendor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

**b) Vendor is and shall remain responsible for paying the transaction fee on behalf of its authorized reseller in the event that the authorized reseller defaults.**

## INVITATION for BID for SOFTWARE

<b>STATE OF NORTH CAROLINA OFFICE OF INFORMATION TECHNOLOGY SERVICES</b>	<b>INVITATION FOR BID NO.</b> Bids will be publicly opened:  Contract Type:
<b>Refer <u>ALL</u> Inquiries to:</b> Telephone No.                      Ext.	Date Issued: Commodity: 208 -
E-Mail:	Using Agency Name:
<b>(See page 2 for mailing instructions.)</b>	Agency Requisition No.

### **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 RFP, 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 to Bid, 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.**

VENDOR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NO:	TOLL FREE TEL. NO (800)
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for 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 \_\_\_\_\_ shall affix their signature hereto and this document. A copy of this acceptance will be forwarded to the successful vendor(s).

### **FOR USE ONLY**

Offer accepted and contract awarded this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as indicated on attached certification,  
 by \_\_\_\_\_ (Authorized representative of \_\_\_\_\_).

1. **DELIVERY INSTRUCTIONS:** Deliver only one fully executed quote document, unless otherwise instructed and only one quote per envelope. Address envelope and insert quote number as shown below. It is the responsibility of the Vendor to have the quote in this office by the specified time and date of opening.

<b><u>DELIVERED BY US POSTAL SERVICE</u></b>	<b><u>DELIVERED BY ANY OTHER MEANS</u></b>
IFB NO. _____ (Agency) ATTN: PO BOX CITY, STATE, ZIP	IFB NO. _____ (Agency) ATTN: STREET ADDRESS CITY, STATE, ZIP

2. **INTENT:** The purpose of this Invitation for Bid (IFB) is to obtain pricing for   (insert intent of quote )   for           (agency)  . Products and services will be provided in accordance to the terms and conditions of this IFB.
3. **(Insert additional parts of solicitation, e.g. specifications, table for units, instructions, et.)**
4. 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 or conditions do not materially change the terms of conditions of this Agreement. In the event of any conflict between the terms or conditions of this Agreement and the Vendor's standard agreement(s), the terms or 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 Section 7 herein shall apply in all cases and supersede any provisions contained in Vendor's Software licensing agreement or any other agreement.
5. **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.:** In accordance with Executive Order #60, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers located outside of the United States. 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 outside of the United States:
  - a. The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract
  - 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
6. Distributors and Resellers: "Resellers" as used herein, refers to businesses that routinely sell or distribute Vendor's Products, and may include "Distributors", "Value Added Resellers" (VARs), "Original Equipment Manufacturers" (OEMs), Channel Partners, or such other designations. These businesses must be approved by the State prior to placement of any orders. ***Unless otherwise provided, the State will establish a convenience contract with one or more resellers through a competitive bidding process.*** Any contract established will be subject to this solicitation and any resulting Agreement(s), and to the terms and conditions of the State's competitive bidding process.

7. **This is an e-procurement solicitation.** See paragraphs #29 of the attached Terms and Conditions for Goods and Related Services. The Terms and Conditions made part of this solicitation contain new 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.
  - a. General information on the e-procurement service can be found at <http://eprocurement.ncgov.com>
  - b. Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service.

## 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.1101(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) 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.
- c) 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.
- d) 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.
- e) 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.
- f) 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.
- g) 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.

- h) 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
- c) 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.
- d) 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 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
- e) 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.

c) 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.

d) 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 Section 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 a United States patent, copyright, trademark or violates a trade secret. 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 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 United States patent, copyright, Trademark or a trade secret, 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 (i) results from the State's alteration of any Vendor-branded product or Product or Software, or (ii) results from the continued use of the good(s) or Services and Products after receiving notice they infringe a trade secret of a third party.
- e) Except to the extent provided in subsection 7.b(v) 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
- i. for any claim based upon any third party claim,
  - ii. for 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. for 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** 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 180 day 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.

- a) Vendor may, at no additional charge, modify Products to improve operation and reliability or to meet legal requirements.
- b) 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.
- c) 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 of 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.1009(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** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Products, whichever is later; unless a period of more than 30 days is required by the Agency.
- 16) **ACCEPTANCE CRITERIA** In the event acceptance of Products is not described in additional Agreement documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following installation of any Product or Software described in the Agreement if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Product or Software 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 Products.
- 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 in conformance with Paragraph 31) herein.
- 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) **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.
- 26) **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.

- 27) **SEVERABILITY** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 28) **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.
- 29) **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.

- 30) **Electronic Procurement (Applies only to Statewide Term Contracts):** Within fifteen (15) calendar days of notice, the Vendor shall provide supplier information, contract pricing and other product related information requested by the State or the Supplier Manager. This information shall include such information as Vendor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information or properly requested by the State of the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the Vendor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the Vendor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display Vendor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with Vendor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the Vendor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.
- a) If the Vendor is not the manufacturer, then it shall be the Vendor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the Vendor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.
  - b) Vendor is and shall remain responsible for paying the transaction fee on behalf of its authorized reseller in the event that the authorized reseller defaults.