

STATE OF NORTH CAROLINA NC DEPT. OF PUBLIC INSTRUCTION (NCDPI) School Connectivity & E-rate	INVITATION FOR BIDS NO. 40-RQ22294323
	Offers will be publicly opened: October 28, 2019 by 5:00pm ET
	Issue Date: September 23, 2019
Refer <u>ALL</u> inquiries regarding this IFB to: Mike Beaver Michael.Beaver@dpi.nc.gov 919-807-3683	Commodity Number: 915-79
	Description: E-Rate Category 2
	Using Agency: NC Dept. of Public Instruction (NCDPI)
See Section 2 for mailing instructions.	Requisition No.: RQ22294323

OFFER AND ACCEPTANCE

The State seeks offers for the goods, software, and/or services described in this solicitation. The State's acceptance of any offer 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 as follows: In cases of conflict between documents comprising the contract, the order of precedence shall be (1) Best and Final Offers, if any, (2) special terms and conditions specific to this IFB, (3) specifications, (4) Department of Information Technology Terms and Conditions of this IFB, and (5) the agreed portions of the awarded Vendor's offer. **No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.**

EXECUTION

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

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

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

Offer valid for one hundred eighty (180) days from date of offer opening unless otherwise stated here: ____ days.

ACCEPTANCE OF OFFER

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

<p><u>FOR STATE USE ONLY</u></p> <p>Offer accepted and contract awarded this _____ day of _____, 20____, as indicated on attached certification,</p> <p>by _____ (Authorized representative of North Carolina Department of Public Instruction, Chief Financial Officer).</p> <p>North Carolina Department of Public Instruction</p> <p>by _____</p> <p>Mark Johnson, NC Superintendent of Public Instruction.</p>
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1.0 INTENT, USE, DURATION AND SCOPE

- 1.1 The purpose of this Invitation for Bids is to obtain pricing for and procure E-rate 'Category 2' eligible on-premises Network Equipment and services for North Carolina Public School Units (PSU) and E-rate eligible North Carolina Public Libraries (Libraries). Goods and Services will be provided in accordance to the terms and conditions of this IFB.
- a. E-rate eligible on-premises Network Equipment and services that have been designated by the Federal Communications Commission's (FCC) Schools and Libraries Universal Service Support Mechanism (otherwise known as the E-rate Program or "E-rate") as "Category Two" Broadband Internal Connections, Managed Internal Broadband Services, and Basic Maintenance of Eligible Broadband Internal Connections as defined by the FCC's E-rate Eligible Services List (ESL), which can be found at: <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>.
 - b. Vendor shall include in its offer at least one (1) product/service of the following segments:
 - Segment A: E-rate Eligible Broadband Internal Connections
 - Segment B: Managed Internal Broadband Services
 - Segment C: Basic Maintenance of Eligible Broadband Internal Connections.
 - c. Vendors offering structured cabling services **must also** offer eligible hardware, such as routers, switches, and/or wireless networking hardware. The State has existing Structured Wiring Convenience Contracts that may be used in an applicant's E-rate "mini-bid" process, which evaluates the costs and deliverables between state convenience contracts and any bids received from this IFB to identify the most cost-efficient and technically sufficient solution
 - d. **This is not a solicitation for offers of E-rate "Category One" Products or Services.**
- 1.2 **Original Equipment Manufacturer/Single Authorized Representative (OEM/SAR):** Vendors offering network switches, access points, firewalls, or routers shall be the Original Equipment Manufacturer (OEM) of the equipment proposed in its offer, or the OEM's single authorized representative (SAR) of the equipment proposed in its offer.
- a. OEM/SARs may authorize up to five distributors/sub-contractors/value-added resellers (third parties) to act on their behalf to deliver the Products and Services of this IFB to schools and libraries during the contract period. A list of proposed third parties shall be included in any response to this IFB.
 - b. NCDPI reserves the right to accept or reject any proposed third parties. If a third party is rejected, the OEM/SAR will be invited to propose a replacement, but at no time will there be more than five third parties per OEM/SAR.
 - c. During the life of any contract awarded to a Vendor utilizing third parties, the OEM/SAR may request NCDPI to remove an authorized third party and substitute another upon notification, evaluation, and acceptance by NCDPI.
 - d. **Under any resulting contract award, the OEM/SAR is completely responsible for their third party's performance.**
 - e. This OEM/SAR requirement does not apply to structured cabling, equipment racks, uninterruptable power supplies (UPS), or other non-core network equipment. NCDPI reserves the right to determine if a product offered is subject to this requirement.
 - f. OEM/SARs may provide their full catalog of products and services that are within the scope of this IFB. This may include products manufactured by other OEMs if they are to be purchased as part of an integrated solution that includes the Vendor's products.

1.3 Scope limited to E-rate eligible Public School Units (PSU) and Public Libraries (collectively, PSU/Library): This solicitation will result in a Cooperative Purchasing Agreement pursuant to NC Session Law 2015-241 Section 8.14 for an indefinite quantity of Products or Services that may be used by a North Carolina E-rate Eligible Public School Unit (PSU) or Library that is a member of the NCDPI E-rate Consortia. While this IFB is seeking Products and Services similar to the existing State Convenience Contract “204X – IT Infrastructure Solutions” (<https://it.nc.gov/documents/contract-204x-it-infrastructure-solutions>), only E-rate eligible North Carolina Public School Units and Public Libraries may use this IFB and any resulting contracts. Use of any resulting contracts is not mandatory by any North Carolina Public School Unit or Public Library.

1.4 Consortia E-rate Filing: The North Carolina Department of Public Instruction (NCDPI) is the E-rate Consortia Lead on behalf of all North Carolina Public School Units and participating public libraries, and this IFB is posted to fulfill the requirements of FCC Form 470 filing #200000716. This consortia filing is done to reduce the level of effort by public schools and libraries in posting effective IFB/RFP documents, Form 470 filings, and the evaluation of responses.

1.5 Intended purchasing process:

a. Vendor/product selection, quotes, and E-rate filing:

- i. Each PSU/Library will identify its needs, select the list of eligible awarded vendors for the necessary goods and services, and will request quotes from those vendors. Where the selected vendor is an OEM/SAR utilizing third parties, the request for quote will be made to all authorized third parties of that OEM/SAR.
- ii. All quotes must meet or exceed the contracted discount rate and, if provided by an authorized third party, must include the statement, ““Provided on behalf of <name of OEM/SAR> <OEM/SAR SPIN>.” in order to meet E-rate requirements.
 1. An initial quote will be made to the PSU/Library no later than three (3) business days, unless otherwise stated by the PSU/Library.
 2. For projects requiring a site-visit, the vendor or third party must contact the PSU/Library within two (2) business days to establish the appointment and must provide an initial quote within five (5) business days after the site-visit, unless a separate schedule is established by the PSU/Library.
- iii. The PSU/Library will conduct an E-rate approved “mini-bid” evaluation of the vendor, the goods/services, and price. During this process, the scope of the project may change and the PSU/Library may seek additional information, quotes, and/or FINAL-FIRM quotes, but is not obligated to request a FINAL-FIRM quote. The individual PSU/Library and the vendor may negotiate additional specific details, such as delivery dates and payment arrangements, provided such details are neither cardinal changes to the scope of this IFB nor contrary to any of the Terms and Conditions of this IFB.
- iv. The PSU/Library will select the most cost-effective, technically sufficient solution and formally notify the selected vendor with a “Letter of Intent” that references the final quote by name/number. This letter is not a purchase order and does not legally bind the PSU/Library to any purchase.
- v. The vendor will respond to the “Letter of Intent” within five (5) business days with a properly completed FCC Form 471 “Item 21 Bulk Upload Template” attachment for Category Two for the appropriate goods/services (Internal Connections, Managed Internal Broadband Services, and/or Basic Maintenance of Internal Connections). The vendor will use the latest version of the template, which can be found at: https://www.usac.org/sl/applicants/step03/form-471.aspx/#bulk_upload_templates
- vi. The PSU/Library will submit the FCC Form 471 request for E-rate discounts.

- b. Upon receipt of a Funding Commitment Decision Letter (FCDL) from Universal Service Administrative Company (USAC), the PSU/Library will submit a Purchase Order(s) to the vendor or OEM/SAR detailing the products, services, and deliverables it wishes to purchase. This executed Purchase Order will be considered a contractual agreement between the PSU/Library and the Vendor to provide listed Products and Services under the Terms and Conditions of this contract.
 - c. All E-rate purchases under this contract will be under **“Service Provider Invoicing” (FCC Form 474)**, where the Vendor will invoice USAC directly for the discounted portion and only invoice the PSU/Library for the “non-discount” portion, unless specifically requested by the PSU/Library.
 - d. A PSU/Library may submit a Purchase Order prior to the receipt of a Funding Commitment Decision Letter with the understanding that, in the event that USAC denies the application, the PSU/Library is solely responsible for the full Purchase Order amount.
 - e. In the event an audit by USAC has findings that demand repayment of any or all E-rate funds after the full delivery of Products and Services, NCDPI School Connectivity will lead good faith negotiations with the Vendor, the PSU/Library, USAC, and the FCC to establish an equitable solution for all parties based on the details of the USAC findings and the results of any appeals. This does not guarantee any payment by NCDPI.
- 1.6 Bids shall be submitted in accordance with the terms and conditions of this IFB and any addenda issued hereto.
 - 1.7 Nothing in this IFB or any resulting contracts shall prohibit an awarded Vendor, in its sole discretion, from offering the Products and Services under this contract to a PSU/Library separate and distinct from any E-rate filings.
 - 1.8 Vendors will not use this contract to offer or sell Products or Services not included in the scope of this contract. NCDPI reserves the right, in its sole discretion, to immediately remove any Vendor that uses, or attempts to use, this contract to offer or sell Products or Services not included in the scope and detail of this contract.
 - 1.9 Vendors are cautioned that NCDPI cannot, does not, and will not guarantee purchase quantities to be made under this contract.
 - 1.10 Specific product models offered by a Vendor in response to this IFB are evaluated for costs and technical sufficiency at the time of award. During the life of a multi-year contract, specific models originally offered may become replaced by newer models of equal or greater technical sufficiency. Therefore, NCDPI will request each selected vendor to provide an updated product catalog with unit pricing to be delivered by December 31 prior to each E-rate Funding Year to reflect product upgrades within the original scope of this IFB. This annual request will not be used to introduce new product lines or new OEMs.
 - 1.11 In the event of a merger or acquisition of manufacturers or product lines offered by awarded vendors, NCDPI will negotiate an amendment between the affected vendors that is in the best interest of the State and in keeping with E-rate program rules.

2.0 GENERAL INFORMATION

DEFINITIONS

- a. **AGENCY SPECIFIC TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities for a single entity.
- b. **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency. As part of the E-rate mini-bid process, a PSU/Library may request a FINAL-FIRM quote that will be considered a request for a Best and Final Offer.

- c. **BUYER:** The employee of the State or Other Eligible Entity that places an order with the Vendor.
- d. **CONTRACT LEAD:** Representative of the North Carolina Department of Public Instruction who corresponds with potential Vendors in order to identify and contract with that Vendor providing the greatest benefit to the State and who will administer the contract for the State.
- e. **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.
- f. **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns the commodity in transit and files any claims; and Vendor pays all freight and any related transportation charges.
- g. **IFB:** Invitation for Bids.
- h. **LIBRARY:** An E-rate eligible North Carolina public library that is independent of any public school and meets the statutory definition of library found in the Library Services and Technology Act of 1996 (LSTA) (20 U.S.C. Section 9122) and must be eligible for assistance from the North Carolina State Library Agency.
- i. **LOT:** A grouping of similar products within an IFB.
- j. **NCDPI:** The North Carolina Department of Public Instruction; the procurement consortia lead, holder of a Letter of Agency from each PSU and Library participating in this Cooperative Purchasing Agreement.
- k. **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the PSU/Library within the delivery time required.
- l. **PUBLIC SCHOOL UNIT (PSU):** Per G.S. 115C-5.(11), – Any of the following: a. A local school administrative unit. b. A charter school. c. A regional school. d. A school providing elementary or secondary instruction operated by one of the following: 1. The State Board of Education, including schools operated under Article 7A and Article 9C of this Chapter. 2. The University of North Carolina, including schools operated under Articles 4, 29, and 29A of Chapter 116 of the General Statutes."
- m. **QUALIFIED BID:** A responsive bid submitted by a responsible Vendor.
- n. **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institutions.

2.1 SITE VISIT – (reserved)

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2.2. IFB SCHEDULE & VENDOR QUESTIONS

The table below shows the *intended* schedule for this IFB. The Contract Lead will make every effort to adhere to this schedule.

Action	Responsibility	Date and Time
Issue IFB	NCDPI	September 23, 2019
Deadline to Submit Written Questions	Vendors	October 7, 2019
Provide Responses to Questions	NCDPI	October 11, 2019
Submit Bids	Vendors	October 28, 2019
Evaluate Offers	NCDPI	October 29 – November 8, 2019
Conduct Negotiations (if needed)	NCDPI and Finalist Vendors	November 11 – 22, 2019
Award Contracts	NCDPI	December 2-13, 2019
Deadline to Submit Protest	Vendors	15 calendar days after award

Upon review of the IFB documents, Vendors may have questions to clarify or interpret the IFB in order to submit the best bid possible. To accommodate the Bid Questions process, Vendors shall submit any such questions by the date specified:

- Due Date: **October 7, 2019**
- Time: **5:00 pm Eastern Time**
- Email: **Michael.Beaver@dpi.nc.gov**

Instructions: Written questions using the form contained in Attachment A, “Question Submission Template” will be received at Michael.Beaver@dpi.nc.gov until the date and time specified above. Please enter “**Questions: IFB # 40-RQ22294323**” as the subject of the email. Vendor questions posed orally at any pre-offer site visit or conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer.

2.3. ADDENDUM TO IFB

All **questions** received prior to the submission deadline date, the State’s response, and any additional terms deemed necessary by the State will be posted in the form of an **addendum** to the Interactive Purchasing System (IPS) (<http://www.ips.state.nc.us>), and the USAC EPC Portal, and shall become an Addendum to this IFB. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this IFB, shall be considered authoritative or binding. Vendors shall be entitled to rely *only* on written material contained in an Addendum to this IFB. Critical update information may be included in these Addenda. **It is important that all Vendors bidding on this IFB periodically check the State IPS website as well as the USAC EPC portal, for any and all Addenda that may be issued prior to the offer opening date.**

2.4. OFFER SUBMITTAL

- Due Date: **October 28, 2019**
- Time: **5:00 pm Eastern Time**

Instructions: **Sealed offers**, subject to the conditions made a part hereof, will be received at the address below, for furnishing and delivering the goods, software, and/or services as described herein.

DELIVER TO:
IFB 40-RQ22294323 NC Department of Public Instruction (NCDPI) Attn: Mike Beaver, Contract Manager 301 North Wilmington Street, Room 3055 Raleigh, NC 27601

It is the responsibility of the Vendor to deliver the offer in this office by the specified time and date of opening, regardless of the method of delivery. Address envelope and include IFB/RFQ number as shown above. Vendors are cautioned that offers sent via U.S. Mail, including Express, Certified, Priority, Overnight, etc., may not be delivered in time to meet the deadline.

BID CONTENTS. For each offer submitted, the vendor shall populate all fields within this IFB and any attachments or Addendum.

Deliver one (1) signed, hard-copy (printed) original executed bid response copy of the signed original executed bid, and two (2) electronic copies of the signed original executed bid on CD, DVD or flash drive to the address identified. Vendor must return all the pages of this solicitation with its offer. The files must not be password-protected and must be capable of being copied to other media. It is advisable that all electronic documents, other than brochures, submitted be searchable. Scanned documents converted to PDF images may not be searchable by reviewers looking for key words. Offers submitted via facsimile (FAX) machine, telephone or email in response to this IFB **will not** be accepted.

Offer must be submitted on the forms provided herein. 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 offer for ‘name of Vendor” and numbered sequentially with the first offer. This legend must be in bold type of not less than 14 point type on the face of the offer, and on the text of the alternative proposal.**

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

2.5. BASIS FOR REJECTION

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

2.6. LATE OFFERS

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

2.7. NON-RESPONSIVE OFFERS

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

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

2.8. NOTICE TO VENDORS

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

2.9. E-PROCUREMENT SOLICITATION

This is NOT an E-Procurement solicitation. Paragraph #47 of the attached Department of Information Technology Terms and Conditions, do not apply to this solicitation.

2.10. DISTRIBUTORS AND RESELLERS – reserved

2.11. POSSESSION AND REVIEW

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

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

2.12. IFB EVALUATION AND AWARD

The State shall review all Vendor responses to this IFB to confirm that they meet the specifications and requirements of the IFB.

- a. Bids are requested for the items as specified, or item(s) equivalent in design, function and performance. The State reserves the right to reject any bid on the basis of fit, form and function as well as cost. All information furnished on this bid may be used as a factor in determining the award of this contract.
- b. Bids will be received from each responsive Vendor in a sealed envelope or package.
- c. All bids shall be received by the issuing agency not later than the date and time specified on the cover sheet of this IFB.
- d. At that date and time specified as the bid opening, the package containing the bids from each responding firm will be opened publicly and the name of the Vendor and the bid price(s) announced.

- e. The State shall review all Vendor responses to this IFB to confirm that they meet the specifications and requirements of the IFB.
- f. For all responses that pass the initial review process, the State will review and assess the Vendors' pricing. The State may request additional formal responses or submissions from any or all Vendors for the purpose of clarification or to amplify the materials presented in any part of the bid. Vendors are cautioned, however, that the State is not required to request clarification, and often does not. Therefore, all bids should be complete and reflect the most favorable terms available from the Vendor. Prices bid cannot be altered or modified as part of a clarification.
- g. Bids will be evaluated, based on the award criteria, below.

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

The State reserves the right to reject all original offers and request one or more of the Vendors submitting bids within a competitive range to submit a best and final offer (BAFO), based on discussions and negotiations with the State, if the initial responses to the IFB have been evaluated and determined to be unsatisfactory.

Upon completion of the evaluation process, the State will make award(s) based on the evaluation and post the award(s) to IPS under the IFB number for this solicitation. Award of a Contract to one Vendor does not mean that the other bids lacked merit, but that, all factors considered, the selected bid was deemed most advantageous and represented the best value to the State.

It is the general intent to award this contract to more than one Vendor. As provided by statute, award will be based on Best Value Analysis, Lowest Price Technically Acceptable Source Selection Method in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302.

Evaluation Process

1. "Best Value" procurement methods are authorized by N.C.G.S. §143-135.9. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's offer; the Vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. Evaluation shall also include compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation.
2. Source selection. A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
 - a) The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the offer.

- b) Evaluation Process Explanation. State Agency employees will review all offers. All offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the IFB materials or Offer shall have specific page numbers and sections stated in the reference.
 - c) To be eligible for consideration, a Vendor must meet the intent of all requirements. Compliance with the intent of all requirements will be determined by the State. Offers that do not meet the full intent of all requirements listed in this IFB may be deemed deficient. Further, a serious deficiency in the offer to any one factor may be grounds for rejection regardless of overall score.
 - d) Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.
3. Best and Final Offers (BAFO). If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional weight to the Vendors' respective offer. Additional weight awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned weights to attain their final ranking.

Evaluation Method. The evaluation committee will evaluate all offers based on the adjectival method. The evaluation team will state the strengths and weaknesses of each vendor's proposal, then rank proposals.

Evaluation Criteria. In order of importance, offers will be evaluated for:

- a) Total cost of E-rate eligible products and/or services to the State, based upon the average discount from list price percentage.
- b) Technical sufficiency of products and/or services within a PSU/Library environment.
- c) Scope and breadth of products and services applicable within a PSU/Library environment.
- d) Qualifications of Vendor (and third parties), to include verifiable industry and/or OEM certifications.
- e) Prior experience with Vendor (and third parties).
- f) Physical location of Vendor (and third parties). Preference will be given to vendors and third parties with substantial physical presence in or near the state of North Carolina.
- g) Total cost of E-rate ineligible products and/or services for those items required to provide E-rate eligible services, yet may require cost-allocation.
- h) Completeness of bid submission.

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

2.13. CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

During the evaluation period—from the date bids are opened through the date the contract is awarded—each Vendor submitting a bid (including its representatives, third parties, sub-contractors and/or suppliers) is prohibited from having any communications with any person inside or outside the using agency, issuing agency, other government agency office, or body (including the purchaser named

above, department secretary, agency head, members of the general assembly and/or governor's office), or private entity, if the communication refers to the content of Vendor's bid or qualifications, the contents of another Vendor's bid, another Vendor's qualifications or ability to perform the contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of bids and/or the award of the contract. A Vendor not in compliance with this provision shall be disqualified from contract award, unless it is determined in the State's discretion that the communication was harmless, that it was made without intent to influence, and that the best interest of the State would not be served by the disqualification. A Vendor's bid may be disqualified if its sub-contractor and supplier engage in any of the foregoing communications during the time that the procurement is active (i.e., the issuance date of the procurement to the date of contract award). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this IFB or general inquiries directed to the purchaser regarding requirements of the IFB (prior to bid submission) or the status of the contract award (after submission) are excepted from this provision.

3.0 SPECIFICATIONS

3.1. VENDOR STANDARD AGREEMENT(S)

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

3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.

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

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

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

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

3.3. E-VERIFY

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

3.4. RESTRICTIONS ON CONTRACTS WITH THE STATE - reserved

3.5. PRODUCT MAKE AND MODEL / BRAND SPECIFIC PRODUCT - reserved

3.6. DESCRIPTIVE LITERATURE

All offers shall include specifications and technical literature sufficient to allow the State to determine that the equipment meets all requirements. This technical literature will be the primary source for bid evaluation. If a requirement is not addressed in the technical literature it must be supported by additional documentation and included with the bid. Bid responses without sufficient technical documentation may be rejected.

3.7. CLOUD SERVICE PROVIDERS (CSPs) - reserved

3.8. BRANDING – reserved

3.9. PRODUCT RECALL

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

3.10. WARRANTY

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 warranty shall cover the cost of all defective parts replacement, labor, freight, and technicians travel at no additional cost to the State.

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 authorized third-party 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. Vendor is responsible for compliance with warranty terms by any third-party service provider.

Is Vendor authorized by manufacturer to repair equipment offered during the warranty period?

YES NO

Will Vendor provide warranty service? YES NO, an authorized third party will perform warranty service

Contact information for warranty service provider:

Company Name: _____

Company Address: _____

Contact Person: _____

Contact Person Phone Number: _____

Contact Person Email: _____

3.11. MAINTENANCE - reserved

3.12. CONTRACT TERM

A contract awarded pursuant to this IFB shall have an effective date as provided in the Notice of Award. The term shall be **five (5) years** and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The **State** retains the option to **extend this contract for five (5) additional one (1) year periods at its sole discretion.**

The State will give the Vendor written notice of its intent whether to exercise each option no later than **one-hundred-eighty (180) days** before the end of the Contract’s then-current term. In addition, the State reserves the right to extend a contract term for a period of up to 180 days in 90-day-or-less increments.

For the managed network services or other E-rate eligible services that span over multiple fiscal or E-rate funding years, any awarded contract from this IFB shall be considered a “right to contract” with the Vendor such that, in the final year (or subsequent extensions) of this contract, a PSU/Library may enter into a multiple-year service contract with an awarded Vendor, up to the maximum length allowed by the federal E-rate program, state procurement law, and local procurement policy.

The State reserves the right to further amend the contract’s intent of coverage as may be required by future legislative activities and changes in the federal E-rate program.

3.13. DELIVERY

Delivery shall not be considered to have occurred **until all items ordered by a Purchase Order have been delivered and, if applicable, installation has been completed.** Upon completion of the installation, the Vendor shall remove and properly dispose of all waste and debris from the installation site. Vendor shall be responsible for leaving the installation area clean and ready to use.

If circumstances beyond the control of the contractor result in a late product delivery or installation, 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.

3.14. SPECIFICATIONS - reserved

4.0 FURNISH AND DELIVER

4.1. SPECIFICATIONS

Reference Federal Communications Commission’s Eligible Services List: [\[https://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx\]](https://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx).

This contract is to provide equipment and services eligible for E-rate support, referred to by the FCC as “Category Two”, and includes the internal connections needed for broadband connectivity within a PSU/Library. Support is limited to the internal connections necessary to bring broadband into, and provide it throughout, schools and libraries. These are broadband connections used for educational purposes within, between, or among instructional buildings that comprise a school campus, and the basic maintenance of these connections, as well as services that manage and operate owned or leased broadband internal connections (e.g., managed internal broadband services or managed Wi-Fi). Category Two support is subject to per-school budgets as set forth in FCC 47 CFR § 54.502. The eligible components and services in Category Two are:

A. Eligible Broadband Internal Connections

- Access points used in a local area network (LAN) or wireless local area network (WLAN) environment (such as wireless access points)
- Antennas, cabling, connectors, and related components used for internal broadband connections
- Caching
- Firewall services and components separate from basic firewall protection provided as a standard component of a vendor’s Internet access service.
- Switches
- Routers
- Racks
- Uninterruptible Power Supply (UPS)/Battery Backup
- Wireless controller systems
- Software supporting the components on this list used to distribute high-speed broadband throughout school buildings and libraries

Notes: (1) Functionalities listed above that can be virtualized in the cloud, and equipment that combines eligible functionalities, like routing and switching, are also eligible. (2) A manufacturer’s multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component. (3) Caching is defined as a method that stores recently accessed information. Caching stores information locally so that the information is accessible more quickly than if transmitted across a network from a distance. A caching service or equipment that provides caching, including servers necessary for the provision of caching, is eligible for funding.

B. Eligible Managed Internal Broadband Services

- Services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections are eligible managed internal broadband services (e.g., managed Wi-Fi).
- E-rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within a PSU/Library. Eligible expenses include the management and operation of the LAN/WLAN, including installation, activation and initial configuration of eligible components, and on-site training on the use of eligible equipment.
- In some eligible managed services models, the third-party manager owns and installs the equipment and the PSU/Library applicants lease the equipment as part of the managed services contract. In other cases, the PSU/Library may own the equipment, but have a third party manage it for them. Vendor must specify details and/or options of equipment ownership in any bid response.

C. Basic Maintenance of Eligible Broadband Internal Connections

E-rate support is available for basic maintenance and technical support appropriate to maintain reliable operation when provided for eligible broadband internal connections. The following basic maintenance services are eligible:

- Repair and upkeep of eligible hardware
- Wire and cable maintenance
- Configuration changes
- Basic technical support including online and telephone based technical support
- Software upgrades and patches including bug fixes and security patches

4.2. TECHNICAL SPECIFICATIONS:

Technical Specifications
Wireless Access Points
Describe how your Wireless Access Points substantially conform to the following specifications:

1. IEEE 802.11 compliant, providing IEEE 802.11ax support as well as backward compatibility with IEEE 802.11b/g/n in 2.4GHz band.
2. At least one 1000 Base-T Ethernet Port. Powered by IEEE 802.11af POE or IEEE 802.11at POE+
3. Support for all of the following:
 - a) Dual radio, 2.4GHz and 5GHz bands, simultaneously; or software defined dual 5 Ghz radios.
 - b) 5GHz, specifically listing which of the bands are supported: UNII-1, UNII-2, UNII-2e and UNII-3
 - c) Dynamic Frequency Selection
 - d) Multiple-In, Multiple-Out (MIMO) radio; multiple spatial stream design with a minimum capacity of 2x2:2
 - e) at least 2 spatial streams in the 5GHz band
 - f) multiple SSIDs and per-SSID access policy
 - g) per-client policy while using only one SSID
 - h) "captive portal" or other facility to ensure Acceptable Use Policy is affirmed by end users
 - i) rate limiting and traffic shaping of guest clients
 - j) client isolation; prevent attached wireless devices from communicating directly with each other
 - k) rogue AP detection
 - l) multiple VLANs with assignable QoS
 - m) IEEE 802.1X Authentication and IEEE 802.11i WPA2/Enterprise cryptography
 - n) Layer 2 / 3 roaming/mobility without performance degradation or re-authentication required by clients (roaming within a single school, not LEA-wide)
 - o) Forward wireless client traffic without backhaul to centralized controller
 - p) Autonomous channel, power, and RF configuration based on dynamic environment changes

Routers / Switches

Describe how your proposed Routers/Switches substantially conform to the following specifications:

- a) Proposed switches must be a Managed Ethernet Switch
- b) Hardware and software must comply with IEEE 802 Standards
- c) Equipment must have the following Fixed and Modular configurations: Standalone, Stackable, and Chassis
- d) Vendor must offer and support both 24-port and 48-port models, at a minimum
- e) Vendor must offer and support the following physical port speeds: 10/100/1000/10000 Mbps, at a minimum
- f) Vendor must offer and support both copper and fiber ports, at a minimum; and
- g) Vendor must offer and support both non-Power Over Ethernet (non-POE) and Power Over Ethernet (POE) options, at a minimum

4.3. SCOPE OF WORK

Cable Installation and Verification Services

- a) All services quoted and installed will be performed in a professional manner and in accordance with the applicable standards identified below and as further detailed in the specifications or in any subsequent statement of work.
 - "Professional manner" includes the awarded Vendors' obligation to independently determine the applicability of the standards herein and the Vendors' adherence to these standards.
 - "Standards", as used herein, comprise: American National Standards Institute (ANSI); Institute of Electrical and Electronics Engineers (IEEE); Americans with Disabilities Act (ADA); Building Industry Consulting Service International's (BICSI) Standards; National Electrical Code (NEC) adopted as the NC Electrical Code; National Electrical Safety Code (NESC); National Fire Protection Association (NFPA); North Carolina Department of Insurance (NCDOI); Occupational Safety and Health Administration (OSHA); TIA / EIA Commercial Building Telecommunications Cabling Standards; Underwriters Laboratories (UL); Local building codes or requirements by the Local Authority Having Jurisdiction (AHJ) and good construction and engineering practices; and Manufacturers' recommendations and specifications.
- b) All awarded Vendors will maintain quality assurance systems or programs that will include all Deliverables. Vendors will only tender to the State those Deliverables that have been inspected and found to conform to the requirements of this Contract.

- c) Cabling Services include internal building and intra-building. Intra-building refers to copper/fiber between two or more buildings on the same property/campus, or two or more buildings on contiguous properties/campuses sharing a common property line.
- d) Installation may include the delivery, unloading, uncrating, setting in place, fastening to walls, floors, counters, or other structures or fixtures where required, internal wiring and connections of components of the system and all other required work.
 - All provided products shall be newly manufactured. The State has a vested interest that Vendors bid and install products that are UL Listed, RoHS compliant and whenever possible, are manufactured in the State of North Carolina.
 - Cutting, patching, and finishing required in connection with any installation and the repair of any damage caused by the installation shall be done by the Vendor to match or exceed the quality of the original conditions both as to material and workmanship.
 - Vendor will be fully responsible for any and all damage caused to property or its contents as a direct result of the execution of contracted services. (At the end of each workday, the Vendor will be required to clean up and remove all debris, cartons, etc., from the premises. Vendor shall prevent accumulation of debris or equipment at the installation site and shall keep all exits free and clear at all times.
 - Vendor must submit test results, electronically generated by test equipment, in a pdf, on digital storage media, to the PSU/Library prior to submittal of an invoice to DIT Structured Cabling Services.
- e) All new cabling for wireless access point outlets must be, at a minimum, Augmented Category 6 Unshielded Twisted Pair.
- f) Fiber will only be run to locations that are greater than 90 meters from the closest aggregation switch or where speeds in excess of 1 gigabit per second are required.

Professional Services (Evaluation, Design, Planning, Installation, and Configuration)

- 1. Vendor will perform all of the following anticipated tasks:
 - Physically mount and install network hardware, including Access Points and Network Switches.
 - Ensure latest firmware is installed in each wireless access point and switch.
 - Configure network management console to meet industry best-practices and PUS/Library requirements and policy.
 - Maximize the use of available spectrum to minimize co-channel interference.
 - Conduct wireless survey to document wireless coverage and co-channel interference.
 - Test access from each Access Point and provide throughput report for each Access Point.
 - Configure and test the authorization of clients, which may rely on Microsoft Active Directory or Google.
 - Configuration of network management console.

Managed Wireless Service

- 1. Vendor shall provide full turn-key managed wireless service to include site survey, installation of all vendor-provided hardware and cabling necessary to provide the service, monitor performance, and maintain operational performance.
- 2. Within bid response, provide a detailed description of the managed service offering(s), including specific equipment provided and supported, a description of the Service Level Agreement, and any available options (i.e. Vendor or PSU/Library hardware ownership, PSU/Library ability to configure).

4.4. PRICING

Using Attachment B as a template, Vendor shall submit pricing information. Bid price shall constitute the total cost to the Buyer for delivery fully assembled and ready for use, including all applicable charges for shipping, delivery, handling, administrative and other similar fees. Vendor shall not invoice for any amounts not specifically allowed for in this IFB.

5.0 ADDITIONAL INFORMATION

5.1. HISTORICALLY UNDERUTILIZED BUSINESSES

Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned

categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled. <http://ncadmin.nc.gov/businesses/hub>

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

Is Vendor a Historically Underutilized Business? YES NO

If "YES", specify classification. _____

5.2. **RECYCLED CONTENT**

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

Does the packaging of the items offered in response to this IFB/RFQ contain recycled content?

YES NO

If Vendor answered "YES" above, indicate the following:

Percentage of recycled content: _____ Can the packaging be recycled? YES NO

Do items offered in response to this solicitation contain recycled content? YES NO

If Vendor answered "YES" above, indicate the material and content percentage of applicable items.

Material: _____ Percentage of recycled content: _____

State how items may be disposed of or recycled at the end of use?

5.3. **ENERGY STAR PRODUCTS**

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

Do products offered meet Energy Star specifications of energy efficiency? YES NO

6.0 **DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS**

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

2) **DEFINITIONS:**

- **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
- **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
- **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
- **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
- **THE STATE:** Is the state of North Carolina and its agencies.

- **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
 - 4) **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 IFB/RFQ, each Vendor must submit with their offer sketches, descriptive literature and/or complete specifications covering the products offered. **Only information that is received in response to this RFQ will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not satisfy this provision. Offers, which do not comply with these requirements, will be subject to rejection.
 - 5) **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 relevant purchasers in the State those products or packaging they offer which have recycled content and that are recyclable.
 - 6) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this IFB/RFQ can be altered only by written addendum and that verbal communications from whatever source are of no effect.
 - 7) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
 - 8) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9, and in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.
 - 9) **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 offer opening. Otherwise the samples will become the property of the State. Each individual sample must be labeled with the Vendor's name, offer 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.
 - 10) **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.

11) PROTEST PROCEDURES: When a Vendor wants to protest a contract awarded pursuant to this solicitation that is over \$25,000 they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. IFB/RFQ status and Award notices are posted on the Internet at <https://www.ips.state.nc.us>. **All protests will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**

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

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

7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

1) DEFINITIONS: As used herein;

- a) Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State in Paragraphs 7 and 8, and included in Paragraph 29 c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- b) Purchasing State Agency or Agency shall mean the Agency (PSU/Library) purchasing the goods or Services.
- c) Services shall mean the duties and obligations accepted by the Vendor to carry out the requirements, and meet the specifications, of this procurement.
- d) State shall mean the State of North Carolina, the Department of Information Technology as an Agency or in its capacity as the Award Authority.

2) 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.
- 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.
- a) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
 - b) This Contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
 - i) Such use does not conflict with the terms, specifications or any amendments to this Contract, or
 - ii) Such use does not conflict with any procurement law, regulation or policy, or
 - iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's 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).
- a) **Intellectual Property**. Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
 - b) **Inherent Services**. If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.
 - c) **Financial Capacity**. Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.
 - d) **Warranty as to Equipment; Hardware**. Vendor warrants that the equipment and hardware that it provides pursuant to this Contract shall be free from defects in materials, in good working order and be maintained in good working order.
- 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: Reserved

9) TRAVEL EXPENSES: All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this 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) as permitted by 09 NCAC 06B.1206, 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 60 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later. The PSU/Library is responsible for all payments under the Contract. 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 N.C.G.S. §§143B-1350(e), 143B-1375 and 09 NCAC 06B.0103 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.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §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.G.S. §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.G.S. §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 N.C.G.S. §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 Department of Information Technology 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 Services, project materials, including goods, software licenses, data, and documentation created during the performance or provision of Services hereunder. Deliverables are the property of the State of North Carolina, except where licensed or leased to 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. 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, in accordance with E-rate rules.

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 patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
 - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

- d) 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 patent, copyright, or a trade secret in the United States, 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.
- e) 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.
- f) 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.G.S. §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 Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offers 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 delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.

27) WAIVER OF DEFAULT: Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of 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 writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 40) herein below.

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 thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

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

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 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.

31) 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 offer 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.

32) STOP WORK ORDER: Reserved

33) PRICE ADJUSTMENTS FOR TERM CONTRACTS: Reserved.

34) TIME IS OF THE ESSENCE: Time is of the essence in the performance of this Contract.

35) 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.

36) INDEPENDENT CONTRACTORS: Vendor and its employees, officers and executives, subcontractors, and third-parties, 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.

37) 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 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.

38) 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.

39) 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.

40) 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 31) herein.

41) 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.

42) 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.

43) 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.

44) 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.

45) 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.

46) 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.

47) ELECTRONIC PROCUREMENT : reserved

48) ELECTRONIC PROCUREMENT : reserved

8.0 E-RATE SPECIFIC TERMS & CONDITIONS

For any E-rate related purchases from this contract, awarded vendors must:

- 1) **Service Provider Invoicing:** The Vendor will, by default and unless otherwise notified by the PSU/Library in writing, invoice E-rate directly for the discounted portion and only invoice the PSU/Library for the "non-discount" portion.

- 2) **Item 21 Bulk Upload Template:** Vendor agrees to provide a Form 471 Item 21 Bulk Upload Template, in Microsoft Excel format, with final quotes. This document must exactly match the E-rate eligible products and services that will be invoiced. Details and examples of this form can be found on the USAC website:
<http://www.sl.universalservice.org/Reference/Form471item21Attachments.asp>
- 3) **Third Party (Sub-contracting):** While sub-contracting will be permitted, the prime Vendor OEM/SAR "Service Provider Identification Number" (SPIN) must appear on all quotes, invoices, and purchase orders. Sub-contractors may use their invoices and letterhead, but all communications between a PSU/Library and sub-contractors must be clearly labeled with the text: "{subcontractor company} on behalf of {prime contractor}, SPIN {prime contractor SPIN}, under contract {contract number} "
- 4) **MSRP publicly available:** The Manufacturer Suggested Retail Pricing (MSRP) of all products and services available under the contract must be publicly available. The portfolio discount percentage will then be applied by the PSU/Library for evaluation purposes. The actual price quoted and invoiced cannot exceed this calculated price.
- 5) **E-rate Partial / Ineligible item identification:** Vendors will clearly identify on all quotes and invoices any items that are either partially or completely ineligible for E-Rate. If partially ineligible, the cost-allocated amount of the ineligible portion will be indicated in quotes and invoices.
- 6) **Maintenance and Support:** The E-rate definitions of "support" and "maintenance" may not match the use of those terms by some manufacturers. The use of these terms when referring to processes such as automated firmware updates can be problematic during E-Rate reviews and audits. Vendors must provide clear definitions of SKUs and line items which may cloud the line between expected firmware upgrades versus those services which entail extended warranty and on-site service. Any clarifications the vendor has received from USAC or the FCC related to these offerings with regards to the Eligible Services List should be provided with the vendor's IFB response.
- 7) **FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT.** Student educational records are subject to 20 U.S.C. 1232g, Family Rights and Privacy Act (FERPA) and may not be disclosed except in very limited circumstances. The contractor shall ensure that every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The contractor is responsible for the actions of its employee and must take all precautions necessary to ensure that no violations occur. Finally, access to personally identifiable student education information will be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this contract.
- 8) **DEBARMENT.** If any of the Products or Services rendered under this contract are to be paid with federal funds, the contractor hereby certifies that the organization and its principals are not suspended or debarred from doing business with the federal government.
- 9) **RESPONDER'S REPRESENTATION:** Responder 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. Responder agrees that it will not enter any agreement with a third party that might abridge any rights of the Requestor under this Contract. Responder will serve as the prime Responder under this Contract. Should the Requestor approve any subcontractor(s), the Responder shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Responders or subcontractors of Responder may appear for purposes of convenience in Contract documents; and shall not limit Responder's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to

Responder. Responder will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

10) REGISTERED SEX OFFENDERS: Responder acknowledges North Carolina G.S. 14-208.18 “Sex offender unlawfully on premises” and expressly agrees that it, its employees, and any subcontractors and/or agents, will comply with this law and acknowledges that any individuals that violate this policy are subject to removal from school property and may also be subject to criminal prosecution. If Responder, any of Responder’s employees, or any of Responder’s subcontractors or employees of subcontractors will have any direct interaction with students, then Responder or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on any PSU/Library property.

11) E-rate Specific Data

- a. Vendor’s E-rate Service Provider Identification Number (SPIN): _____
- b. Vendor affirms ability and willingness to:
 - i. Utilize Service Provider Invoicing (SPI) billing unless specifically instructed by the school/library to not use SPI billing.
 - ii. Abide by all FCC E-rate program rules and regulations.

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Attachment A: Question Submission Template

Vendor shall submit any questions it may have regarding this IFB or the IFB process in accordance with section 2.2 and in this format in the body of the email:

Vendor Name:	
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Question #	IFB Section	IFB Subsection	Vendor Question
1			
2			
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Attachment B: Proposal Summary

This summary attachment is intended to provide a high-level overview of a Vendor’s response to the review team to properly group bid responses. This summary should be accompanied with a detailed list of products / services offered by the Vendor, grouped by segment, the MSRP, the minimum percentage off MSRP, and percent E-rate eligible in an Excel workbook.

Vendor Name:	
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Segment A: Broadband Internal Connections

Sub Segment	Minimum Percentage Discount Off MSRP
Antennas, connectors and related	
Cabling	
Firewall services and components	
Racks	
Routers	
Switches	
UPS	
Access Points	
Wireless Controller systems	
Software to support these components	

Value Added Service / Installation	Description	Unit of Measure	Not to Exceed Cost	Comments

Segment B: Managed Internal Broadband Services

Sub Segment	Minimum Percentage Discount Off MSRP
Monthly Service	
Installation	
Hardware (if to be owned by PSU/Library)	

Segment C: Basic Maintenance of Eligible Broadband Internal Connections

Sub Segment	Minimum Percentage Discount Off MSRP
Repair/Upkeep of eligible hardware	
Wire/Cable maintenance	
Configuration Changes	
Basic Technical Support (online or phone)	
Software upgrades, patches	

Exceptions to Minimum Percentage Discounts

Segment	Sub Segment	Description of Exception	Minimum Percentage Discount Off MSRP

Attachment C: Proposed Third Parties (for use by OEM/SAR responses)

Vendor	Contact Name	Contact E-mail	Contact Phone	Street Address	City	State

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