

Solicitation (IFB, RFP, RFQ) No. _____

Bidder/Offeror: _____

**THIS PAGE IS TO BE FILLED OUT AND RETURNED WITH YOUR BID. FAILURE TO DO SO
MAY SUBJECT YOUR BID TO REJECTION.**

ATTENTION

Federal Employer Identification Number or alternate identification number
(e.g., Social Security Number) is used for internal processing, including bid tabulation.

Enter ID number here: _____

Pursuant to N.C.G.S. 132-1.10(b) this identification number shall not be released to the public.

This page will be removed and shredded, or otherwise kept confidential,
before the procurement file is made available for public inspection.

STATE OF NORTH CAROLINA NC Education Lottery	INVITATION FOR BIDS NO. LC-61000005	
	Bids will be publicly opened: December 4, 2008	
	Contract Type: Open Market	
Refer <u>ALL</u> Inquiries to: Michele Goff Telephone No. (919) 301-3433	Commodity: A/V EQUIPMENT, MAINTENANCE & ENHANCEMENTS	
E-Mail: mgoff@lotterync.net	Using Agency Name: North Carolina Education Lottery	
(See page 2 for mailing instructions.)	Agency Requisition No. PR8440174	
<i>Within two days after notification of award of a contract, the vendor must register in NC E-Procurement@Your Service (http://vendor.ncgov.com.)</i>		

NOTICE TO BIDDERS

Sealed bids, subject to the conditions made a part hereof, will be received at this office (2100 Yonkers Road) until **2:00 p.m.** on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Refer to page 2 for proper mailing instructions.

Bids submitted via telegraph, facsimile (FAX) machine, telephone, and electronic means, including but not limited to e-mail, in response to this Invitation for Bids will not be acceptable. Bids are subject to rejection unless submitted on this form.

EXECUTION

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. I also certify that I have read the North Carolina Lottery Act, in particular, G.S. 18C-151(C) as it relates to the conduct of background investigation of vendors. This information can be found on our website at: <http://lottery.nc.gov/uploads/fulllotterybill.pdf>

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

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

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

ACCEPTANCE OF BID

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

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

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

It is desirable that all responses meet the following requirements:

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

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

<u>DELIVERED BY US POSTAL SERVICE</u>	<u>DELIVERED BY ANY OTHER MEANS</u>
BID NO. _____ NORTH CAROLINA EDUCATION LOTTERY 2100 YONKERS ROAD RALEIGH, NC 27604 <u>DELIVERED BY US POSTAL SERVICE</u>	BID NO. _____ NORTH CAROLINA EDUCATION LOTTERY 2100 YONKERS ROAD RALEIGH, NC 27604 <u>DELIVERED BY ANY OTHER MEANS</u>

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

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

TRANSPORTATION CHARGES: FOB Destination. Freight charges must be included in the price of each item listed, not listed as a separate item.

DELIVERY LOCATION: NCEL Headquarters, 2100 Yonkers Road, Raleigh, NC 27604.

SCOPE: Furnish and deliver equipment, provide maintenance and enhancements, per specifications.

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

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

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

General information on the e-procurement service can be found at:
http://www.ncgov.com/eprocurement/asp/section/ep_index.asp

AWARD CRITERIA: As provided by statute, award will be based on the lowest and best bid(s) (most advantageous to the NCEL) as determined by consideration of:

1. Prices offered.
2. Quality of equipment offered.
3. General reputation and performance capabilities of the bidder.
4. Conformity with specifications herein.
5. Delivery and installation schedule.
6. Location and availability of service and repair facilities and personnel.
7. Suitability for Intended Use.
8. References provided for proposed equipment.
9. Demonstration of proposed equipment, if required.

AWARD OF CONTRACT: It is the general intent to award this contract to a single overall bidder on all items. The right is reserved, however, to make awards on the basis of individual items or groups of items, if such shall be considered by the NCEL to be most advantageous or to constitute its best interest. Bidders should show unit prices, but are requested also to offer a lump sum price.

BID EVALUATION: Bids are requested on the items and/or equipment as hereinafter specified or like items similar in design, function and performance. The NCEL reserves the right to reject any bid on the basis of function, compatibility with user's intended use or applications as well as costs. Bidder(s) are cautioned that any/all information furnished or not furnished on this bid may be used as a factor in determining the award of this contract.

DELIVERY: Delivery will be made per Scope of Work **as soon as possible** after receipt of order. The State reserves the right to make the delivery offered a factor in the award of any contract resulting from this Invitation For Bids.

DEVIATIONS: Any deviations from specifications and requirements herein must be clearly pointed out by bidder. Otherwise it will be considered that item(s) offered is in strict compliance with these specifications and requirements, and successful bidder will be held responsible therefor. Deviations must be explained in detail below or on an attached sheet. However, no implication is made by the NCEL that deviations will be acceptable. Bidder is advised that the response (or lack thereof) on this question does not take precedence over specific responses or non-responses provided elsewhere in this bid.

INFORMATION AND DESCRIPTIVE LITERATURE: Bidders are requested to furnish with their bid detailed descriptive literature and general specifications and other pertinent data necessary for their evaluation as required by Par. 9 of the attached "Instructions to Bidders." In addition, bidder must complete the attached questionnaire sections of the bid. Bids which do not comply with these requirements may be subject to rejection.

WARRANTY: The contractor warrants to the owner that all equipment furnished under this specification will be new, of good material and workmanship, and agrees to replace promptly any part or parts which by reason of defective material or workmanship shall fail under normal use, free of negligence or accident, for a minimum period of twelve (12) months from date put in operation, or manufacturers warranty, whichever is greater. Such replacement shall include all parts, labor, and transportation cost to the location where equipment is down, free of any charge to the owner or his representative.

PRIME VENDOR CONCEPT: The North Carolina Education Lottery will award any contract that may be issued as a result of this Invitation For Bids to a single Prime Vendor. The prime vendor must assume responsibility for all products and services in support of the requirements. Vendors who submit proposals as prime contractors may wish to provide all of the proposed products and services directly, or provide certain elements directly and the remainder through subcontractors. Under the prime contractor arrangement, subcontractors are allowed and encouraged. However, the prime contractor must provide positive evidence that it will be responsible for all products and services provided to satisfy the requirements and specifications of this IFB.

NOTE: All materials, equipment and installation shall be in compliance with the State Building Code, OSHA, Department of Insurance requirements and all Federal, State and local codes/laws that are applicable. Installation shall be in compliance with the manufacturer's recommendations. Any conflicts between the attached specifications and the State Building Code shall be resolved in favor of the code.

MANDATORY SITE VISIT: It shall be **MANDATORY** that each bidder representative be present for a pre-bid site visit on **Thursday, November 13, 2008**. Attendees are to meet promptly at **1:00 pm EST**. All attendees must sign in at this time. The purpose of this visit is for all prospective bidders to acquaint themselves with the conditions and requirements of the task to be performed. Attendees will be apprised of all conditions of installation and should take any necessary measurements. Bidders shall stay for the duration of the site visit. No allowances will be made for unreported conditions which a prudent bidder would recognize as affecting the work called for or implied by this bid.

FAILURE TO COMPLY WITH THIS REQUIREMENT WILL RESULT IN REJECTION OF YOUR BID.

In order to confirm your attendance at scheduled site visit, contact Michele Goff at 919-301-3433.

NAME OF ATTENDEE IN ATTENDANCE AT SITE VISIT: _____

Bidder is cautioned that any information released to attendees during site visit, other than that involving the physical aspects of the facility referenced above, and which conflicts with, supersedes, or adds to requirements in this Invitation For Bids must be confirmed by written addendum (issued by Purchasing) before it can be considered to be a part of this Invitation For Bids document. Bidder bidding otherwise does so at his own risk.

QUESTIONS: Questions concerning the specifications in this Invitation For Bids will be received until **November 19, 2008, 4:00 pm EST**. NO QUESTIONS WILL BE ACCEPTED AFTER THIS DATE AND TIME. **All questions must be submitted in writing** to Michele Goff at fax (919) 301-3620 or mgoff@lotterync.net. A summary of all questions and answers will be posted on the IPS website (<https://www.ips.state.nc.us/ips/deptbids.asp>) as an addendum to the RFP. This information shall appear directly under the RFP being modified.

It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

MAINTENANCE: The maintenance shall maintain the system specifications and performance level in accordance with the manufacturer's published specifications and of this Invitation For Bids. It shall include all parts, all remedial maintenance labor, all travel and living expenses incurred. Coverage shall be for 8:00 am to 5:00 pm, Monday through Friday, except State recognized holidays and shall include a minimum of two (2) preventive and safety maintenance inspections per year. The State has the option to accept the maintenance coverage at any time within the 12 months warranty period and to elect a billing cycle of preference.

REFERENCES: All bidders shall be authorized dealers for equipment proposed. References are to be provided with contact persons and delivery dates for equipment. Failure to comply with these requirements will result in rejection of your bid. Are you an authorized dealer for the equipment you are offering in this bid? _____ (Yes/No)

<u>SITE</u>	<u>DATE OF DELIVERY</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE #</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SERVICE: Adequate and satisfactory availability of repair parts and supplies, and ability to meet warranty and service requirements are necessary. The NCEL reserves the right to satisfy itself by inquiry or otherwise as to bidder's capabilities in this regard.

LIST: Name, address and telephone number for which service and parts are available.

PROTEST PROCEDURES: BY SUBMITTING BID, VENDOR ACKNOWLEDGES THEIR ACCEPTANCE OF THE NCEL'S VENDOR DISPUTE RESOLUTION WHICH WILL SUPERCEDE ANY STATE TERMS & CONDITIONS SHOULD A CONFLICT ARISE. (See Vendor Information at <http://lottery.nc.gov/> for policy.)

INDEMNITY CLAUSE: Contractor agrees to indemnify, defend and hold harmless the NCEL, the Commission, its directors and officers, the State of North Carolina and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all third party suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from any act or omission of Contractor, their Subcontractors, or any of its or their respective agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards, any other substandard conduct or otherwise. By submitting bid, vendor acknowledges their acceptance of the NCEL's indemnity clause which will supercede any state terms & conditions should a conflict arise.

BRAND SPECIFIC: MANUFACTURER'S NAME AND PRODUCT DESCRIPTION USED IN THIS SOLICITATION ARE PRODUCT SPECIFIC. THE ITEMS OFFERED IN RESPONSE TO THIS SOLICITATION MUST BE THE MANUFACTURER AND TYPE SPECIFIED. THESE SPECIFIC PRODUCTS ARE NEEDED DUE TO COMPATIBILITY AND CONTINUITY OF SUPPORT. IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE PURCHASER LISTED ON THE FIRST PAGE.

ALL EQUIPMENT MUST BE NEW. NO REFURBISHED OR USED EQUIPMENT WILL BE ACCEPTED. VENDOR MUST BE AN AUTHORIZED RESELLER OF THE RECOMMENDED EQUIPMENT.

SCOPE OF WORK/SPECIFICATIONS:

The purpose of this IFB is to obtain pricing for and select a single Vendor to:

- 1) Provide new audio-visual equipment:
 - Polycom HDX 7000 with People+Content (qty=1)
http://www.polycom.com/usa/en/products/video/video_conferencing_systems/small_medium_conference_room/hdx7000.html
 - One Polycom HDX Ceiling Microphone array (qty=1).
 - One year Polycom Premier Maintenance for HDX 7000 (qty=1)
- 2) Place all equipment including currently owned NCEL audio-visual equipment located at NCEL Headquarters, 2100 Yonkers Road, Raleigh, NC 27604, under one annual maintenance contract:
 - Sanyo PLC-XU48 3000 Lumens projector
 - Draper Phantom "A" electric ceiling projector lift-plenum rated
 - Da-Lite #84347 tensioned electric 5x7 ceiling screen
 - 2 x LG M4200C-BA 42" flat panel display
 - 2 x Peerless PLP-ZEN 42 flat panel display adapter
 - 9 x Electro Voice EVID 8.2 ceiling speakers
 - 2 x Stewart CVA 7401 power amps-70V
 - 2 x Shure ULX 14/30 wireless headset microphone
 - ClearOne XAP 400 AEC audio mixer
 - Extron MVX44 VGA A-VGA+ audio mixer
 - Extron MAV44AV audio/video matrix switcher
 - Crestron AV2 dual bus control system
 - Crestron TPS 2000L active matrix touch panel
 - Crestron CNPC1A power controller
 - PolyCom RMX 2000
 - PolyCom SE200
 - Sony SLV D360P DVD/VHS combo

3) Provide enhancements to an existing conference room:

- Reprogram the existing Crestron touch panel from scratch to reproduce all existing functionality. All Crestron source code will remain the property of NCEL.
- Add the functionality to output audio from the Shure table microphones to speakers at the rear of the conference room using the existing Crestron touch panel.

FURNISH AND DELIVER EQUIPMENT, PROVIDE MAINTENANCE AND ENHANCEMENTS, PER SPECIFICATIONS.

LINE ITEM #	QTY	UOM	DESCRIPTION	UNIT COST	TOTAL EXTENDED COST
1.	1	Each	Polycom HDX 7000 with People+Content, per attached specifications.	\$ _____	\$ _____
2.	1	Each	One Polycom HDX Ceiling Microphone array, per attached specifications.	\$ _____	\$ _____
3.	1	Year	One year Polycom Premier Maintenance for HDX 7000, per attached specifications.	\$ _____	\$ _____
4.	1	Year	One annual maintenance contract for all equipment including currently owned NCEL audio-visual equipment, per attached specifications.	\$ _____	\$ _____
5.	1	Each	Provide enhancements to an existing conference room, per attached specifications.	\$ _____	\$ _____

TOTAL OF LINES 1-5: \$ _____

ANSWER ALL DEVIATIONS:

INSTRUCTIONS TO BIDDERS

1. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the North Carolina General Contract Terms and Conditions. NC Education Lottery objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of this document, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
 - **BIDDER:** Company, firm, corporation, partnership, individual, etc., submitting a response to an Invitation for Bids.
 - **TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities only.
 - **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies, unless exempted by statute, rule, or special term and condition specific to this bid.
 - **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.
4. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.
5. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) North Carolina General Contract Terms and Conditions, and (4) Instructions to Bidders.
6. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, bidder's offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
7. **PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
8. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
10. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
11. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
12. **ACCEPTANCE AND REJECTION:** NC Education Lottery reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
13. **REFERENCES:** NC Education Lottery reserves the right to require a list of users of the exact item offered. NC Education Lottery may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.

14. **TAXES:**

- **FEDERAL:** The NC Education Lottery is exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the NC Education Lottery.
- **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

15. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to the NC Education Lottery as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the NC Education Lottery to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the NC Education Lottery or the bidder, the NC Education Lottery reserves the right to accept any item or group of items on a multi-item bid. In addition, on TERM CONTRACTS, the NC Education Lottery 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 the NC Education Lottery to be pertinent or peculiar to the purchase in question.
16. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150 and G.S. 18C-151, the NC Education Lottery invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
17. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, the NC Education Lottery will consider keeping trade secrets which the bidder does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
18. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become NC Education Lottery property. Each individual sample must be labeled with the bidder's name, bid number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
19. **PROTEST PROCEDURES:** When a bidder wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When a bidder wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bid status and Award notices are posted on the Internet at <http://www.state.nc.us/pandc/>. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.doa.state.nc.us/PandC/protests.pdf> for more information.)
20. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
21. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident bidders. The "Principal Place of Business" is defined as the principal place from which the trade or business of the bidder is directed or managed.

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

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

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

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the NC Education Lottery may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the NC Education Lottery, and de-bar the Contractor from doing future business with the NC Education Lottery.
2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. NC Education Lottery reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the contractor are dependent upon and subject to the availability of funds to the NC Education Lottery for the purpose set forth in this agreement.
4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
5. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
7. **INSPECTION AT CONTRACTOR'S SITE:** NC Education Lottery reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for NC Education Lottery determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
8. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The NC Education Lottery is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
9. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
10. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
11. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.
12. **PATENT:** The contractor shall hold and save NC Education Lottery, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.

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

THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract. Contractor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

Contractor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Contractor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, contractor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Contractor. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate contractor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

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

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

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

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

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

06/28/2006