

STATE OF NORTH CAROLINA Department of Health and Human Services Office of Procurement and Contracting Services	REQUEST FOR PROPOSAL NO. 30-DIRM-178-07	
	Bids will be publicly opened: March 26, 2007 5:00 PM	
	Contract Type: Agency Specific	
Refer ALL Inquiries to: Susan W. Lewis Telephone No. (919) 855-4080 Fax No. (919) 733-5957	Date Issued: February 14, 2007 Service: Central Region Psychiatric Hospital Wireless Communications	
E-Mail: susan.lewis@ncmail.net	Using Agency Name: NC Department of Health and Human Services Division of Information Resource Management	
(See page 2 for delivery instructions.)	Agency Requisition No. N/A	

OFFER AND ACCEPTANCE: This solicitation advertises the State's needs for the services and/or goods described herein. The State seeks proposals comprising competitive bids offering to sell the services and/or goods described in this solicitation. All proposals and responses received shall be treated as offers to contract. The State's acceptance of any proposal must be demonstrated by execution of the acceptance found below, and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence among terms as follows: Special terms and conditions specific to this RFP, Specifications of the solicitation documents, except as amended, the State's General Terms and Conditions for Goods and Related Services, as may be amended by the Supplemental Terms annexed hereto, if any, Best and Final Offers, if any and the awarded Vendor's proposal.

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

Failure to execute/sign bid prior to submittal shall render bid invalid.

VENDOR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO
Will any work under this contract be performed outside the United States?		YES _____	NO _____
Where will services be performed: _____			
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for one hundred and twenty (120) days from date of bid opening.

ACCEPTANCE OF BID: If any or all parts of this bid are accepted, an authorized representative of DHHS shall affix their signature hereto and this document and the provisions of the special terms and conditions specific to this Request for Proposal, the specifications and the ITS Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

FOR DHHS USE ONLY Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification, By _____ (Authorized representative of DHHS).
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USING AGENCY:

NC Department of Health and Human Services
 Division of Information Resources Management
 Raleigh, North Carolina

ISSUING AGENCY:

NC Department of Health and Human Services
 Susan W. Lewis, Assistant Director
 Office of Procurement and Contracting Services
 801 Ruggles Drive, Hoey Building
 Raleigh, North Carolina

DELIVERY INSTRUCTIONS: Deliver two (2) signed originals and seven (7) duplicate copies of the Proposal to Issuing Agency in a sealed package with Company Name and RFP Number clearly marked on the front. Vendor must also submit with its bid one (1) CD with an electronic copy of its proposal embedded thereon. The embedded copy of the proposal must be in a read/write, unprotected status, in Microsoft Office format. The electronic copy of the proposal may be set out in one (1) or more files; if the proposal is presented in more than one file, the files must be indexed. If the electronic copy of the proposal is too large to fit on one CD, the first CD must contain a master index of all of the files on all of the discs. Attachments may be set out in separate files; however, they must either link to the main text or the file name must correspond to the attachment name in the main text.

DELIVERED BY US POSTAL SERVICE	DELIVERED BY ANY OTHER MEANS
RFP # 30-DIRM-178-07 NC Department of Health and Human Services Office of Procurement and Contracting Services Attn: Susan W. Lewis, Assistant Director 2008 Mail Service Center Raleigh, NC 27699-2008	RFP # 30-DIRM-178-07 NC Department of Health and Human Services Office of Procurement and Contracting Services Attn: Susan W. Lewis, Assistant Director 801 Ruggles Drive, Hoey Building Raleigh, NC 27603-2001

Bids must be received at 801 Ruggles Drive, Hoey Building by no later than 5:00 PM on the day of opening. Proposals for this RFP must be submitted in a sealed package with the Execution of Proposal signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed execution of proposal shall result in disqualification. All proposals must comply with Section VI. Proposal Content and Organization.

Proposals will not be accepted by electronic means. This RFP is available electronically at <http://www.ips.state.nc.us/ips/pubmain.asp>. All inquiries regarding the RFP requirements are to be addressed to the contact person listed on Page One.

Written questions concerning the RFP specifications will be accepted until February 28, 2007 at 2:00 PM. They must be sent via e-mail to: susan.lewis@ncmail.net. Please insert "RFP Central Hospital Wireless Questions" in the subject matter line of your e-mail. A summary of all questions and answers will be posted to the Interactive Purchasing System (IPS) as an addendum to this RFP.

Addendum to RFP: If written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), <http://www.ips.state.nc.us/ips/deptbids.asp>, and shall become an Addendum to this RFP.

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

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

NOTICE TO VENDORS: The State will not be required to evaluate or consider any additional terms and conditions submitted with a Vendor response. However, in the instance where the Vendor includes terms and conditions for its standard maintenance agreement(s) applicable to products acquired under this Agreement, such terms and conditions may apply to the extent they 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 or conditions of this Agreement shall apply in all cases and supersede any provisions contained in Vendor's agreement.

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

Interpretation of Certain Phrases: This Request for Proposal serves two functions: (1) to advise potential Vendors of the parameters of the Solution being sought by the State and (2) to provide (together with other specified documents) the terms of the contract resulting from this procurement. As such, all terms in the Request for Proposal shall be enforceable as contract terms in accordance with the General Terms and Conditions. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether proposals should be evaluated or rejected, the State will take into consideration the degree to which Vendors have proposed or failed to propose Solutions that will satisfy the State's needs as described in the Request for Proposal, using the criteria specified above from 9 NCAC 06B.0401. Except as specifically stated in the Request for Proposal, no one requirement shall automatically disqualify a Vendor from consideration.

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Section I. Introduction and Overview

A Introduction

The purpose of this Request for Proposal ("RFP") is to acquire a suite of wireless communications products and related implementation services (the "Solution") that achieve the short-term and long-term goals of the Department of Health and Human Services ("Department" or "DHHS") and the Division of Mental Health, Developmental Disabilities and Substance Abuse Services ("Division" or "DMH/DD/SAS"). The short-term goals are to provide wireless communications that meet the business considerations of the new Central Region Psychiatric Hospital in Butner, North Carolina (the "New Hospital"), that interface with the wireless network to be implemented at the New Hospital, and that interface with the private branch exchanges (PBXs) at the existing John Umstead Psychiatric Hospital. The long-term goals are to acquire an adaptable, extensible and flexible suite of products that can meet the wireless business needs of the Department well into the future.

The New Hospital will be approximately 488,500 square feet in size, will house 432 beds, and will serve mental health clients in the central region of the state. The New Hospital is to be a state-of-the-art facility that can provide the highest quality of services to mental health clients. The New Hospital is scheduled to open on September 17, 2007. The Solution must be operational before the New Hospital opens.

The Department intends to improve client care and safety by providing wireless communications throughout the New Hospital. DHHS, DMH/DD/SAS and the Division of Information Resource Management ("DIRM") (referred to collectively as the "State") will fund and manage the procurement, design and deployment of this project. The State intends to create a digital infrastructure for open-air communications to help doctors, nurses and clinicians use wireless technology effectively when performing their work, while providing a safe and secure environment for hospital personnel and clients.

To achieve its goals, the State is seeking proposals for a comprehensive, modular solution for automating and managing the following business functions:

- Mobile voice communications
- Mobile data communications
- Mobile personnel security management
- Location/asset management
- Alarms/alerts/notifications management

The Solution offered by the Vendor shall include, but not be limited to, the following:

- Wireless Devices
- Software
- Architecture and Design Services
- Integration Services
- Implementation Services (e.g., install, configure, testing, etc.)
- Program and Project Management Services
- Training

Vendors are encouraged to offer products that best meet the business considerations and needs of the State; support the use of industry recognized best practices; and enable the State to become more sophisticated in its performance of the IT functions covered by this RFP. Key considerations for offered products are:

- Ability to support business considerations
- Ability to provide functional capabilities beyond the business considerations listed in this RFP
- Technical soundness and design
- Implementation and integration timeliness
- Ongoing support and growth
- Cost
- 24 X 7 availability and reliability

Section II. Technical Environment

A Statewide Technical Architecture and Wireless Security Standard

The State of North Carolina has a Statewide Technical Architecture (STA) that provides principles, guidelines and a framework for the development, implementation, and integration of business systems. The STA can be found at <http://www.ncsta.gov/>. Agencies and Vendors should refer to the STA documents when implementing enterprise applications and/or infrastructure.

The State's Wireless Security Standard can be obtained from the *Statewide Information Security Manual*, which can be found at: http://www.scio.state.nc.us/SITPoliciesAndStandards/Statewide_Information_Security_Manual.asp. The Wireless Security Standard may be found within Chapter 9 of the *Statewide Information Security Manual*, Section 0301, "Electronic Eavesdropping," pages 7-11.

B Technical Environment for the New Hospital

The technical environment (NOTE: At this time the environment is not 100% finalized) at the New Hospital will follow standard operating procedures as outlined in the STA. However, the Vendor may include other environmental considerations in the formulation of their response and, if so proposed, the Vendor shall note any such deviation from the following environmental considerations in the Vendor's response to this RFP. Some highlights of the current standards are as follows.

- **Hosting** – Standard operating system platforms include Red Hat Linux, Microsoft Windows 2003 and Sun Solaris 10. VMware server virtualization products are currently in testing and Vendors shall make reference to VMware if it is supported by the Vendor's proposed offering. Standard hardware platforms include Sun V and E-Series, IBM xSeries and HP Blade servers.
- **Wireless** – The planned wireless infrastructure is currently under assessment. The Vendor shall propose the best wireless infrastructure technological fit for the Vendor's proposed Solution.
- **Storage** – Oracle and Microsoft SQL are the databases used; storage (Fiber Channel SAN-based) is kept separate from applications.
- **Security** – Tools planned for use are Patchlink, Foundstone, Nessus, BindView and Acutenix. Vulnerability data will be received from the Common Vulnerabilities and Exposures (CVE) database, and exposures will be scored against the Common Vulnerability Scoring System (CVSS).
- **Anti-Virus** – The standard anti-virus solution is Trend Micro.
- **Reporting** – The planned reporting tools are SAS, Crystal Reports and Business Objects.
- **Authentication** – The State employs an end-user authentication and authorization (A&A) identity management service called NC Identity (NCID) Service that is based on the Oracle COREid product suite, Version 7. The planned new environment will use the NC Office of Information Technology Services (ITS) "NCID Application Integration Model 2" (see https://www.ncid.its.state.nc.us/NCID_Diagrams_and_Presentations.asp). Further information can be found in the ITS Service Catalog at <http://www.its.state.nc.us/> (see "ITS Service Catalog" under Hot Topics) and the NCID web site at <https://www.ncid.its.state.nc.us>. All Solutions requested in this RFP are required to authenticate the end-user to an Active Directory database.

The following IT systems fall outside the scope of this RFP. However, the systems sought under this RFP will have to interface, or integrate, with the following IT systems.

1 Voice and Wireless Network Infrastructure

Although not part of this RFP, the State will be installing a new wireless infrastructure to support mobile voice and data applications, including those proposed by Vendors in response to this RFP.

Mobile computing includes the use of various mobile (i.e., wireless) devices such as notebook computers, tablet personal computers (PCs), personal digital assistants (PDAs) and other manned and unmanned devices equipped with radio frequency technology. These devices will allow the medical, administrative and maintenance personnel to input and extract data to/from the Central Region Psychiatric Hospital network as they perform daily tasks.

A Nortel Digital PBX (1000M MultiGroup switch, previously known as 81C PBX) wired, desktop telephone system provides the normal day-to-day communications for many Central Region Psychiatric Hospital staff.

2 Personal Security

Some hospital clients pose a physical threat to other hospital clients and personnel. Therefore, security for hospital clients and personnel is a priority for the State. The New Hospital will support a computer-based security management system that includes access control, intrusion detection, intercommunications, closed circuit television (CCTV), door controls and intercoms.

3 Equipment Issuing Alarms/Alerts/Notifications

The New Hospital will use the Dukane ProCare 6000 nurse call system, the Philips Medical Intellivue Monitoring Rev G system, the Nortel MCS (Multimedia Communications Server) 5100 system, as well as electronic mail (email) and various internal and external digital paging systems.

The ProCare 6000 system provides voice and data communication between client rooms and nursing stations. The system allows a client to request immediate attention from any hospital bed or any emergency button location. This system is connected throughout the facility and is accessible via its third party interface called Pocket Page.

The Intellivue Monitoring system provides alarms from different medical equipment such heart monitors. The alarm information originates from the Philips' server via the DBS Alarm Data Export interface.

The MCS 5100 system provides "Find Me" and "Follow Me" telephony and data computer services for the hospital personnel. This equipment receives personally directed voice and data alerts and delivers the alerts to the recipient via his/her preferred end user device.

The email and internal/external paging systems deliver manually sent messages to the corresponding end-user devices.

C Current Environment at the John Umstead and Dorothea Dix Hospitals

The section below describes the processes in place at the current hospitals that are scheduled to be replaced by the New Hospital. The business goals of these processes will also need to be achieved at the New Hospital, and the Vendor's proposed Solution should highlight any improvements that are offered.

1 Asset Management

The hospital Electronics Department is responsible for all non-medical equipment (stationary and mobile). The department manages the tracking, repair, maintenance and care of a wide variety of stationary and mobile equipment such as DVD and VCR players, fire equipment, etc. The Electronics Department uses a Microsoft Access database to track the equipment and repair/maintenance services and to report relevant data to the facility's governing bodies (i.e., National Fire Protection Agency, Joint Commission on Accreditation of Healthcare Organizations, the NC Department of Insurance and the NC Department of Justice).

The hospital Medical Equipment group is responsible for ensuring that the medical and administrative staff follows hospital and national standards on bio-medical equipment. The group uses Sentinel 32, a single-user application, to manage this activity.

The Medical Equipment group also manages the tracking, repair, maintenance and care of all medical equipment (stationary and mobile). Microsoft Excel is used to track the roughly 400-500 medical equipment items, and to manage the repair and policy-regulated maintenance of these items.

Section III. Business Considerations

This section highlights business considerations associated with the products and services specified in this RFP. The descriptions and items are neither mutually exclusive nor collectively exhaustive; however, the material reflects considerations representative of those that may be used in the review of Vendor proposals.

The State seeks to implement a “state-of-the-art” system that will satisfy most of the State’s business considerations, as specified in this RFP; will be simple to maintain; and will be inexpensive to upgrade and expand to satisfy future needs. Vendors are encouraged to present products and services that reflect their best approaches for:

- a) meeting the business and technical considerations, challenges, and opportunities described in this RFP; and
- b) incorporating recognized industry best practices.

Vendor proposals shall clearly demonstrate how they will achieve the following business functions:

- Mobile voice communications
- Mobile data communications
- Location/asset management
- Alarms/alerts/notifications management – Vendors shall propose a Solution that addresses the aggregation of data communications/alerts issued by equipment. This aggregation is intended to promote improved personnel workflow management
- Mobile personnel security management

Vendors must define and elaborate on any other proposed Solution features, functions and/or capabilities that are not identified herein as a business consideration in this RFP.

A Mobile Voice Communications Considerations

The mobile voice communications system shall provide wireless voice communications service with access to the public switched telephone network (PSTN) over radio frequencies that allow direct-dial and mobile-to-mobile communications to be established via the use of portable devices. The proposed wireless voice communications service and devices shall offer, at a minimum, the following:

- Communications management functions (e.g., call control, call forwarding, “Caller ID”)
- Support of PBX services (e.g., direct inward dialing, call transfer, T1, Voice over IP (VoIP))
- Simple but flexible user interface for use in a hospital environment
- Software license management
- A roadmap for asset management of devices in the mobile environment

Goal: Portable and mobile wireless voice communications with, but not limited to, the following features:

- Interfaces to and/or integrates with, at a minimum, the existing Nortel PBX telephony system (1000M MultiGroup switch, previously known as 81C PBX);
- Logically connects to a location tracking/asset management system that:
 - o Provides a hardware and software infrastructure that can be used to determine the whereabouts of hospital personnel that are mobile throughout the facility;
 - o Provides the means for an end-user to generate an emergency voice alert that is received by other end-users when the personal security of the staff member initiating the alert is compromised; and
 - o Supports internal (within the New Hospital) and external (to any external phone number) communications.

- Provides for the management of hardware and software infrastructure with report generation.
- Is wireless capable and compliant with industry standards (e.g. Federal Communications Commission (FCC), Institute of Electrical and Electronic Engineers (IEEE)).
- Uses end-user devices that are appropriate for a psychiatric hospital environment (i.e., provide for private voice communications, reduce ambient noise and meet HIPAA Security standards). The HIPAA Security Rule can be found at <http://www.cms.hhs.gov/SecurityStandard/Downloads/securityfinalrule.pdf>.
- Easily activated to promote end-user personal safety.
- Allows for the management of user profiles.
- Permits system administrative or controlled user access via role-based security.
- Contains sufficient capacity throughout the system to support the subscriber projections defined in Table 1. These subscriber projections are estimates provided herein for the sole purpose of allowing consistent Vendor RFP responses and may or may not depict actual subscriber volumes.

Table 1. Projected Total Mobile Voice Communication Subscribers by Year

Subscribers Analysis	Total Subscribers				
	Year 1	Year 2	Year 3	Year 4	Year 5
Mobile Voice Communications System	350	375	400	425	450

B Mobile Data Communications Considerations

A mobile data communications system shall provide wireless data communications service and devices to be used by hospital personnel. This alphanumeric service and devices shall provide a means of equipment-to-person and person-to-person communications/notifications throughout the entire hospital facility. The data communications may be short, concise information transmitted to a digital wireless terminal. The proposed mobile data communications system, at a minimum, shall:

- Synchronize the service and the end-user devices.
- Support the mobile voice communications system.
- Support the logical connection to the location/asset management system.
- Support most email and digital text messaging systems.
- Accomplish software management (e.g., license management).
- Support the alarm alert/notification system.
- Perform management tasks for message functions (i.e., provides information/reports concerning system usage and ownership, etc.).
- Support the State's email system (i.e., Critical Path IMAP (Internet Message Access Protocol) email system).
- Support the State's calendar system (i.e., currently Steltor CorporateTime calendar system, however this may change in the future; therefore the Vendors shall list all the calendar applications the Solutions can support).

Goal: Data (i.e., text) messaging to mobile personnel within the New Hospital, with, but not limited to, the following features:

- A mobile data communications system that is able to interface to and/or integrate with a wireless voice communications system and logically interface with the location/asset management and alert/notification systems. In addition, the mobile data communications system shall:
 - o Provide the delivery of alphanumeric text messages to a portable mobile device.
 - o Provide an understanding about the dependencies of the logical infrastructure associations.
 - o Assist in determining the impact of changes and new configurations in the technical environment for the New Hospital.
- Provide for administrative access to the system and data/reports (e.g., number of subscribers, text messaging volume and message delivery statistics).
- Interface with email and alphanumeric paging systems.
- Interface with the alarm alert/notification system.
- Send and receive text messages sent to/by subscribers.
- Have the capacity to support the subscriber projections defined in Table 2. These subscriber projections are estimates provided herein for the sole purpose of allowing consistent Vendor RFP responses and may or may not depict actual subscriber volumes.

Table 2. Projected Total Mobile Data Communication Subscribers by Year

Subscribers Analysis	Total Subscribers				
	Year 1	Year 2	Year 3	Year 4	Year 5
Mobile Data Communications System	350	375	400	425	450

C Location/Asset Management Considerations

A location/asset management system shall provide a management and always real time location service for the tracking of assets (e.g., devices) throughout the hospital. The proposed system shall use the wireless environment to accomplish these tasks. Personnel at the New Hospital shall have the ability to “tag” (i.e., physically place an active Radio Frequency Identification (RFID) tag on) any asset as appropriate. The proposed location/asset management system shall:

- Provide asset management for the location of all tagged items/devices.
- Accomplish software license management
- Support mobile voice and data communications services.
- Provide a view for the management of all user profiles.
- Provide visualizations of physical space.
- Address and optimize other business considerations within this RFP.

Goal: Real time location/asset management of mobile voice and data communications devices and mobile medical equipment (e.g., intravenous (IV) pumps, wheelchairs), with, but not limited to, the following features:

- A location/asset management system that is able to transition to or integrate with a wireless infrastructure system and logically connect to mobile voice and data communications and alarm alert/notification systems. In addition, the location/asset management system shall:

- o Provide physical and logical connectivity with dependencies on the different applications and functionality.
- o Determine the impact of changes on the hospital's technical environment.
- o Determine the manufacturer/technology of the required wireless radio frequency infrastructure that provides maximum value to the Vendor's proposed Solution.
- Support the entire Central Region Psychiatric Hospital wireless coverage area.
- Provide on-demand tracking, monitoring and visualization of all assets within the wireless coverage area.
- Provide current and historical asset/device intelligence (i.e., location, usage, etc.) reports.
- Have a high degree of accuracy in locating assets throughout the wireless coverage area.
- Use open standards protocol communications with existing industry wireless infrastructure access point switches/controllers; however, Vendors may propose the most appropriate and reliable Solution for their specific proposals.
- Provide for future support of additional location technologies (e.g., passive RFID with open non-proprietary Application Programming Interface (API) or Ultra High Band (UHB) technologies).
- Support an open, standards-based integration environment.
- Use asset tags that support anti-theft functionality.
- Have sufficient capacity throughout the system to support the assets/devices projections defined in Table 3. These subscriber projections are estimates provided herein for the sole purpose of allowing consistent Vendor RFP responses and may or may not depict actual subscriber volumes.

Table 3. Projected Total Location/Asset Management Assets and Laptop/PDA Devices by Year

Subscribers Analysis	Total Subscribers				
	Year 1	Year 2	Year 3	Year 4	Year 5
Location/Asset Management System (active RFID tags)	200	225	250	300	325
Wireless Laptop/PDAs	100	135	175	200	225

D Alarm Alerts/Notifications Management Considerations

An alarm alert/notification management system shall provide a system for managing clinical alarms and notifications with a strategy to optimize nursing operations so that supervisory complexities and operational inefficiencies are reduced. The proposed system shall provide an alarm management plan to:

- Create a “safety net” in the client care environment.
- Improve workflow optimization across various medical units.
- Provide clinical and non-clinical alarm “workflow” (i.e., notification and escalation path) and integration.
- Support requests for help made by clients and medical equipment.
- Confirmation of the distribution of alarms and response within the medical, maintenance and administrative units.

Goal: Manage incoming hospital alarms and provide profile-defined notifications to subscribers via multiple interfaces (i.e., mobile data communications devices, paging systems, email, etc.), with, but not limited to, the following features:

- An alarm alert/notification management system that is able to interface and/or integrate with existing alarm systems (*Section II.B*), mobile voice and data communications system, and other communication systems (e.g., email, alphanumeric paging, etc.), and that:
 - Provides physical and logical connectivity as appropriate based on dependencies of the different applications and functionality.
 - Aggregates disparate client and hospital alarms for delivery to defined personnel.
- Creates a standard for the alarm environment.
- Is notification device independent (i.e., works with all wireless, wired, etc. devices).
- Manages and escalates alerts/notification in a pre-defined format.
- Supervises “alert fatigue” as a result of nuisance alarms, etc.
- Provides an alarm management strategy.
- Provides for the centralized collection, collation and distribution of alarms and messages.
- Identifies any changes within the hospital's technical environment.

E Mobile Personnel Security Considerations

A mobile personnel security environment shall provide management and remote voice and/or data notification of personnel in need of support from the New Hospital's security staff. The mobile personnel security environment can be stand-alone and/or inclusive of other systems proposed in this RFP. The proposed system shall:

- Provide notification to security staff of personnel in distress.
- Promote an operationally safe environment.
- Perform continual, automatic radio frequency propagation analysis assessments of the mobile environment.
- Identify and authenticate emergency communications.
- Identify the physical location of the personnel in distress.
- Provide voice communications between the security department and the personnel in distress.

Goal: Provide a management and remote notification security environment for mobile personnel.

F Architecture Design/Integration Considerations

The architecture design shall provide for a comprehensive integration of the business considerations requested in this RFP. The architecture design for the proposed systems shall:

- Minimize the amount of wireless devices that the subscriber must wear.
- Standardize open interfaces for future connections.
- Provide comprehensive role-based management capability for subscribers and administrators.
- Support the State's wireless infrastructure strategy and security standard.
- Minimize impact with planned technical environment.
- Minimally meet, and enhance as appropriate, the overall business considerations in this RFP.

- Provide remote management capabilities.
- Provide 24 hours/7days/week availability and reliability.

Section IV. Project Management Deliverables and Implementation Considerations

A Project Management Deliverables and Standards

1 Project Management and Applications Development Methodology Standards

The Vendor agrees to adhere to the State of North Carolina Project Portfolio Management (PPM) Workflow (http://www.scio.state.nc.us/documents/docs_PortfolioManagementInitiative/NC_PPM_Workflow.pdf) for the duration of this contract to obtain State approvals required for IT projects. The Vendor also agrees to follow a project management methodology that adheres to the Project Management Institute (PMI) Project Management Body of Knowledge (PMBOK) or to follow DIRM's methodology as defined on the DIRM website (<http://dirmpmm.dhhs.state.nc.us/>).

The Vendor agrees to use mutually agreed-upon naming and numbering conventions to identify deliverables and milestones for the duration of the contract. These conventions shall be proposed by the Vendor, approved by the State, and set out in the approved Project Work Plan. The Vendor agrees to adhere to an Applications Development Methodology (architecture design and integration) equal to, or more stringent than, IEEE.

2 Project Management Deliverables

The Vendor is responsible for producing all Project Management deliverables defined below. Production implementation of the project may be accomplished in multiple Implementation Phases per the approved Project Work Plan (Schedule), at the State's discretion. Therefore, the phases and deliverables described in this section shall occur multiple times, once for each approved Implementation Phase.

ALL written deliverables shall be formally reviewed and approved by the State according to *Section IV. B. Formal Acceptance Process and Performance Standards, Sub-Section 1 Formal Acceptance Process* prior to acceptance of such deliverable.

2.1 Status Reports, Meeting Agenda and Minutes

The Vendor must provide status reports for regularly scheduled status meetings (weekly throughout the duration of the contract or as determined by the State). The Vendor shall submit these documents two (2) business days in advance of each status meeting in the formats approved by the State. These status reports shall consist of:

- A report that details the status of major milestones and project deliverables completed, in process, planned, delayed or added
- An updated Risk Matrix
- An updated Issues Log
- An updated Project Work Plan reflecting progress
- A State Chief Information Officer (SCIO) status report as required, in the specified format
- Any other Project Management or Project Approval documents required by the State

The Vendor shall provide assistance in the creation, modifications of documentation, as requested to State personnel in preparing for State and Federal reviews, as needed. This includes, but is not limited to, consulting and documentation.

The Vendor shall prepare and provide an Agenda and subsequent Minutes for all meetings that the Vendor is required to attend.

2.2 Project Management Plan

The Vendor must provide an initial Project Management Plan in its proposal. A Project Management Plan is a formal, approved (see *Section IV. B. Formal Acceptance Process and Performance Standards, Sub-*

Section 1 Formal Acceptance Process) document that describes the technical and management approach to be followed for a project and is used to guide both project execution and project control.

2.3 Project Work Plan

The Vendor must provide an initial Project Work Plan in its proposal. The Project Work Plan must detail the phases, activities, tasks, milestones, timelines and resource requirements necessary to complete the project. No task in the plan may exceed 40 hours in work effort. The Project Work Plan must incorporate details related to the formal review, approval and sign-off of deliverables by State personnel in accordance with Section IV. B. Formal Acceptance Process and Performance Standards, Sub-Section 1 Formal Acceptance Process. Any and all deviations from the Work Plan must follow the accepted Change Management Plan prior to being effected. The Work Plan shall be developed and maintained utilizing Microsoft Project 2002 (or newer version).

2.4 Staffing and Organizational Plan

The Vendor must provide an initial Staffing Plan in its proposal. The initial Staffing Plan must include an organization chart showing how the Vendor proposes to staff the project, and it must name key Vendor personnel. Key personnel minimally include: the Vendor Project Manager, Vendor Technical Lead and Vendor Lead Trainer. If staffing levels will change during different project phases, the initial Staffing Plan must include a separate organization chart for each project phase.

The initial Staffing Plan must list all required Vendor staff and State resources and specify each staff member's title, function, role, responsibility and authority. Proposals must contain resumes of all Vendor proposed personnel.

The awarded Vendor shall deliver a final Staffing Plan within fifteen (15) business days after Contract Award if different from that proposed.

2.5 Implementation Plan

The Vendor must provide an initial Implementation Plan in its proposal. The plan must clearly define the Vendor's approach to the planning and execution of all implementation activities throughout all Vendor-proposed Implementation Phases. Implementation activities refer to those activities that must be completed to rollout the Solution once it has been developed and fully tested.

The awarded Vendor shall deliver a final Implementation Plan within thirty (30) business days of Contract Award if different from that proposed. The Vendor must review and update the Implementation Plan at least once every 60 calendar days thereafter.

2.6 Issues Management Plan and Log

An Issues Management Plan describes how issues shall be identified, tracked, monitored and resolved. An Issues Log is a project control deliverable that must be updated for each Status Meeting during the project.

2.7 Change Management Plan and Log

A Change Management Plan describes how changes will be handled. It must conform to existing DIRM and / or ITS change management procedures. The plan must include a description of how changes shall be identified, tracked and classified, and how changes shall be incorporated into the project or deferred.

2.8 Risk Management Plan, Matrix and Log

A Risk Management Plan, Matrix and Log describe how risks shall be identified, tracked, monitored and mitigated. A Risk Matrix is a project control deliverable that must be updated for each Status Meeting during the project.

2.9 Communications Plan

A Communication Plan documents the following: what persons need what information, how frequently the information will be delivered, in what form the information will be delivered (i.e., formal report, meeting, etc.), and the person responsible for ensuring that the communication is delivered. The type of information to be communicated includes reporting of project processes and progress as well as procedures and responsibilities for problem management and escalation.

2.10 Quality Management Plan

A Quality Management Plan describes how quality shall be handled, controlled and maintained.

2.11 Test Plan

The Vendor must provide an initial draft Test Plan in its proposal. The awarded Vendor shall deliver revised draft and final Test Plans after Contract Award, as specified in the approved Project Schedule. The Test Plan shall clearly describe, among other things, the Vendor's strategy for performing Unit Testing, System/Integration Testing, Load Testing and User Acceptance Testing. The Test Plan shall describe the manner in which accessibility (Section 508 and/or W3C), system interfaces and, if applicable, HIPAA electronic transactions will be tested. The Test Plan shall identify all automated testing tools the Vendor plans to employ, including the specific release/version number of the products. If the Vendor plans to employ automated test tools, then all test data files shall be in electronic format suitable for input to other testing tools.

The Vendor shall certify all HIPAA electronic transactions using an industry accepted third-party certification tool or service at no additional cost to the State.

2.12 ITS Project Approval Materials including System Design Document

The Vendor shall submit a completed *Technical Architecture System Design Document* (available for download on the ITS web site at <http://www.its.state.nc.us/Information/ITPlansBudgetsProjects/>) in its proposal. After Contract Award, the awarded Vendor shall prepare and deliver any and all Project Approval Materials required by the SCIO pursuant to the approved Project Schedule and as requested by the State Project Manager. See <http://www.scio.state.nc.us/sitPolicies.asp> for an initial list of materials that may be required by the SCIO over the life of this project. NOTE: This list is subject to change.

2.13 User Documentation

Upon Contract Award and during each Implementation Phase thereafter, the awarded Vendor shall timely deliver all drafts and all final versions of all required User Documentation pursuant to the approved Project Work Plan. Two (2) paper copies and one (1) editable electronic copy of the User Documentation shall be delivered ten (10) business days before the beginning of each applicable registration period for user training session.

The Vendor shall review and update the User Documentation periodically as system changes are implemented, or every six (6) months, whichever is sooner.

Electronic documents shall be in Microsoft Word and Adobe PDF indexed formats.

2.14 Training Plan and Training Material

Upon Contract Award and during each Implementation Phase thereafter, the awarded Vendor shall deliver all drafts and all final versions of the Training Plan and training materials timely and pursuant to the approved Project Schedule. The Training Plan shall clearly describe the Vendor's training strategy and shall clearly describe how each training requirement shall be met. Vendor shall provide training onsite for each module per the number of subscribers listed in Tables 1, 2 and 3 on pages 9-11.

Two (2) paper copies and one (1) editable electronic copy of the Training Materials shall be delivered ten (10) business days before the beginning of the registration period for each user training session. Training Materials shall include a Training Evaluation Survey that shall be distributed to all trainees (estimated number of users that will be trained are listed within each item above) at the conclusion of every training session.

The Vendor shall provide the Training Materials in paper and editable, electronic format. Electronic documents shall be in Microsoft Word, Microsoft PowerPoint and Adobe PDF indexed formats as applicable. The Vendor shall distribute one (1) paper-based set of Training Materials for each trainee that attends a training session.

2.15 Security Plan, Security Reports and Security Audits

The Vendor must provide an initial Security Plan in its proposal. . At a minimum, the plan must address the following issues: identification, authentication/access control, system integrity, data integrity, control against unauthorized activity, privacy, confidentiality, administration, audit trails and incident response and reporting.

After Contract Award, the awarded Vendor shall deliver a final Project Security Plan within five (5) business days after receiving feedback from the State. The Vendor shall review, and if required, update the Security Plan at least every three (3) months.

The awarded Vendor shall maintain its products and services and shall promptly update them to comply with all changes to all applicable Federal, State or NC DHHS security requirements.

The Vendor shall perform an initial security assessment upon contract award and shall perform security reviews, assessments and audits annually thereafter. The Vendor shall report its findings to the State in writing in both hard (i.e. written paper memo, etc) and soft (i.e. electronic MS Word, etc.) format.

The Vendor shall also participate in Federal, State, NC DHHS and independent third party audits.

At the request of the State, the Vendor shall provide a report of system audit trails, sorted by User Identifier (ID) and security role, with the time, date and User ID of data added, updated, marked for deletion, physically deleted, searched on, viewed or printed.

2.16 Disaster Recovery Plan and Participation in Disaster Recovery Tests

The Vendor must provide an initial Disaster Recovery (DR) Plan in its proposal. The DR Plan must provide detailed instructions, with cost estimates, on how to backup and recover the proposed Solution(s). After Contract Award, the awarded Vendor shall deliver a final DR Plan within five (5) business days of receiving feedback from the State.

The Vendor shall conduct a DR Test prior to the implementation of the solution(s) and annually thereafter. The DR Plan shall include requirements to work through DHHS on additional DR Tests that include recovery of hardware, software and the environment during this contract. The Vendor shall deliver an updated Disaster Recovery Plan within ten (10) business days following the conclusion of each DR Test.

2.17 Transition Plan

The Transition Plan documents the steps that need to be taken by the awarded Vendor and the State upon the natural or early termination of the contract. A draft Transition Plan is due within forty (40) business days after Contract Award. The final Transition Plan is due within five (5) business days after the Vendor receives the State's comments on the draft plan.

The Vendor shall implement the Transition Plan during the final months of this contract. In addition, the Vendor shall provide the transition assistance required by the State pursuant to the Transition Assistance terms stated in RFP Section VII. Special Terms and Conditions.

At the conclusion of each Project Phase, the Vendor shall submit an updated Transition Plan to the State for its review, modification and approval. The State and the Vendor can both recommend changes to the plan at any time. All changes to the plan must be approved by the State.

2.18 Configuration Management Plan

The Configuration Management Plan documents the steps needed to be taken by the awarded Vendor. Configuration Management is the detailed recording and updating of information that describes an enterprise's computer systems and networks. Configuration Management encompasses all hardware and software components, including interfaces with State systems. Such information typically includes the versions and updates that have been applied to configuration items, including the locations and network addresses of hardware devices and other configuration details.

2.19 Lessons Learned

Lessons Learned shall be documented at the end of every Phase. Lessons Learned shall include, but not be limited to, causes of variances and the reasoning behind corrective actions chosen. The Vendor shall deliver the first Lessons Learned document within ten (10) business days after the completion of the first Phase (i.e., ten (10) business days after the approved Project Schedule shows the first Phase as 100% complete). The Vendor shall deliver updates to the Lessons Learned document within ten (10) business days after the completion of each Phase.

3 Additional Implementation Considerations

3.1 Training

The Vendor shall propose training solutions to provide the State with options for training. The training options shall include, but not be limited to, end-user training, train-the-trainer training and transition training.

3.2 Maintenance and Operations, Modifications, Help Desk, Release Support and Upgrades

The Vendor shall provide Maintenance and Operations, Modifications, Help Desk, Release Support and Upgrades options to the State in its proposal.

B Formal Acceptance Process and Performance Standards

1 Formal Acceptance Process

All deliverables are subject to the Performance Standards defined below and shall follow this Formal Acceptance Process. The State shall designate DHHS signatories for each deliverable at commencement of the Project. The Vendor Project Manager shall be a signatory on all deliverables and shall sign the document first. Once the DHHS signatories receive a deliverable, there shall be on average a ten (10) or less business-day review period. The review period shall depend on the size and complexity of the deliverable. The actual review periods shall be specified by the State during the work planning session after award and shall be included in the final work plan by the Vendor. If changes to a deliverable are required, the deliverable shall be returned to the Vendor with the required changes documented. The Vendor shall make the required changes and return the deliverable within five (5) business days. The review-and-revise process shall be repeated until all changes are incorporated and approved by the DHHS signatories. After three (3) attempts, the State has the option of declaring default. If the Vendor disagrees with the changes required, the issue shall be escalated to the DIRM Project Manager/Director or other State designee for final resolution. The deliverable is considered accepted when all signatories have signed-off on the deliverable. Once accepted, changes to the deliverable shall follow the Change Management Plan. **ALL DELIVERABLES SHALL PASS THROUGH THIS FORMAL ACCEPTANCE PROCESS.**

2 Performance Standards, Measurement Method and Reduction in Compensation

Within 15 calendar days following the last day of each calendar month, the Vendor Project Manager shall deliver to the DIRM Project Manager/Director a performance checklist that reports the degree to which the Vendor has met or exceeded the performance standards identified within this section. The Vendor shall supplement the checklist with documentation of the Vendor's performance. The DIRM Project Manager or Director shall review the Vendor's measurements and audit and verify the documentation. After the DIRM Project Manager/Director has verified and accepted the Performance Checklist, the DIRM Project Manager/Director will sign the Performance Checklist and deliver it to the DIRM Contract Administrator. The DIRM Contract Administrator will in turn mail (or fax) a copy of the signed Performance Checklist to the Vendor Contract Administrator. The scores on the Performance Checklist shall determine the amount of compensation due to the Vendor.

DHHS reserves the right to audit, at its discretion and without notice, any documents, records, data or other evidence related to the Vendor's performance under this RFP. DHHS also reserves the right to measure the Vendor's performance independently.

2.1 Performance Standards

2.1.1 Timeliness

All deliverables shall be delivered to the State in accordance with the deadlines stated in the State-approved Project Work Plan.

2.1.2 Quality

All deliverables shall meet or exceed the quality standards in the State-accepted Quality Management Plan.

2.2 Reductions in Compensation

2.2.1 Performance Management Deliverables

The fixed Management Fee for any given month may be reduced by 5% for each instance in which the Vendor has failed to meet the performance standards for the Performance Management Deliverables that were delivered, or scheduled for delivery, during that month.

For example, if five different performance management deliverables were delivered late in a given month, the fixed Management Fee for that month could be reduced by 25% (5 deficiencies x 5% = a 25% reduction). If each of those five late deliverables were also deficient in form or content, the fixed Management fee for that month could be reduced by 50% (10 deficiencies x 5% = a 50% reduction).

If the Vendor fails to cure to the State's satisfaction, all deficiencies in a deliverable after the deliverable has been returned to the Vendor three times, the State may declare that the Vendor has forfeited the Management Fee for any part or all of the Project Management Phase.

2.2.2 All Other Deliverables

The fixed cost of the entire contract may be reduced by 10% for each instance in which the Vendor has failed to meet the performance standards for any deliverables other than Performance Management Deliverables.

For example, if two different deliverables (other than performance management deliverables) were delivered late, the total fixed cost of the contract could be reduced by 20% (2 deficiencies x 10% = a 20% reduction). If each of those two late deliverables were also deficient in form or content, the total fixed cost of the contract could be reduced by 40% (4 deficiencies x 10% = a 40% reduction).

If the Vendor fails to cure --- to the State's satisfaction --- all deficiencies in a deliverable other than a Performance Management Deliverable after the deliverable has been returned to the Vendor three times, the State may declare that the Vendor has forfeited up to 20% of the fixed cost of the entire contract.

- 2.2.3 The Parties agree that the amounts of these reductions in compensation are reasonable and not punitive.
- 2.2.4 The DIRM Contract Administrator, the DIRM Project Director or the DIRM Project Manager shall promptly notify the Vendor of the Vendor's failure to meet any performance standard.
- 2.2.5 The imposition of a reduction in compensation shall not affect or waive any other rights of DHHS has to enforce or terminate this Contract.
- 2.2.6 If DHHS elects not to impose a reduction in compensation in any particular instance, this decision shall not be construed as a waiver of DHHS' right to reductions in compensation; nor construed to limit any additional remedies available to the State.
- 2.2.7 At the discretion of the State, the reduction in compensation can be applied more than once to a deliverable. For example, if a Status Report is not delivered on time, there may be a reduction in compensation. If the same Status Report, when it is delivered, does not meet the prescribed format (quality), there may be a second reduction in compensation.

Section V. Bidding Information

A Evaluation Process

- 1) **"Best Value"** procurement means the selection of a Vendor by determining which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. 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 proposal; 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 procurement.
- 2) **Source Selection.** A tradeoff/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 methodology will be consistent with 9 NCAC 06B.0302, or the corresponding section of any future NC Administrative Code, and this section.
 - b) The Evaluation Team 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 shall be complete and reflect the most favorable terms. Vendors shall be prepared to send qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the proposal.
- 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 proposals, and request BAFOs from the Vendors within this range. The State will evaluate BAFOs and add any additional points to the Vendors' respective scores. Points awarded from oral presentations and product demonstrations, if any, will be added to the previously assigned points to attain final scores.
- 4) **Evaluation Process.** The State will follow the process below when evaluating proposals submitted in response to this RFP:
 - a) A one-step process shall be used. Vendors shall submit offers, combining technical and price information together. However ALL costs shall only be located within Section V. C. Cost Proposal.
 - b) Evaluation Process Explanation: The Evaluation Team will review all proposals. All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it may not be considered further. All responsive proposals will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Proposal shall have specific page numbers and sections stated in the reference.
 - c) Eligibility for Consideration: The State expects each Vendor to meet the intent of ALL mandatory requirements and to include ALL mandatory documentation within the response as stated in the RFP. Compliance with the intent of mandatory requirements shall be determined by the State. The State will conduct an initial eligibility review to determine whether a response is so deficient in responding to mandatory requirements and documentation that it will be rejected without further evaluation. Responses that do not meet the full intent of all requirements may be subject to point reductions during the evaluation process or may be rejected pursuant to 09 NCAC 06B.0401.
 - d) Two-tier Evaluation Process: This is a two-tier evaluation process after the initial proposal Eligibility for Consideration step is taken. The Tier 1 review will examine all proposals for mandatory requirements. Proposals not meeting mandatory requirements may be rejected pursuant to 09 NCAC 06B.0401. Rejected

proposals will not be further evaluated. Remaining proposals will be ranked by score. As a second tier in the evaluation process, Vendor(s) may be asked to participate in Presentations and Demonstrations and the product evaluation process described below.

- e) Presentations and Demonstrations: Upon request, Vendor(s) shall agree to demonstrate their proposed products/services to the Evaluation Team and other project stakeholders at no cost to the State. In addition, The Vendor proposed Project Manager shall coordinate and lead the session(s) on State site, with assistance from other Vendor personnel as needed. The State will provide a meeting location that has an Internet connection. The Vendor(s) shall provide any other equipment or materials needed to conduct the presentation and/or demonstration. Vendors shall be prepared to perform demonstrations at DHHS or at ITS location within five (5) working days of notice.

Following the demonstrations and at the request of the State, Vendor(s) may be asked to provide a production-like demonstration environment site that will allow the Evaluation Team and other project stakeholders to test system functions on State site as part of the evaluation process. The demonstration environment shall have fully functioning software that operates exactly as the proposed product(s). Vendor(s) shall allow the Evaluation Team members' access to a demonstration environment and/or Solution for a maximum of twenty (20) business days, at no cost to the State. The demonstration and demonstration environment shall be available to all Evaluation Team members (approximately 20 users). The demonstration environment shall be available 7:00 a.m. to 7:00 p.m. Eastern Standard Time, Monday through Sunday.

- f) Vendors are advised that NC DHHS is not obligated to ask for, or accept after the closing date for receipt of proposal, data that is essential for a complete and thorough evaluation of the proposal.
- 5) Each of the evaluation criteria in Table 4 shall be evaluated in accordance with the solicitation documents. Proposals shall be evaluated against the criteria set out in Table 4. Points originally awarded to a proposal following the State's initial review of the proposal may be modified after the oral presentations and product demonstrations.

Table 4. Proposal Evaluation Criteria

Evaluation Criteria	Maximum Points
Tier 1	
1. Vendor strengths, capabilities and experience , including corporate background and structure, past and current implementations, financial soundness, performance history (including references).	20
2. Effectiveness of proposed suite of products , including ability to meet the business objectives and functions described in this RFP; soundness and appropriateness of technical design and operations; consideration of the provisions of the statewide technical architecture; scalability; interface with Dukane ProCare 6000 Nurse Call System; interfaces with the DHHS wireless network, interface with other hospital communications systems; use of the NCID service; value added products and services	40
3. Implementation approach , including offered approach for testing, training and other implementation assistance; implementation plan; architecture and design services, integration services, scheduling and timing for completion of implementations; team qualifications, skills and experiences	20
4. Costs – The total cost of ownership, including initial product purchases, initial implementations, ongoing maintenance/licenses, future product purchases for scalability, internal ongoing operations and maintenance.	20
Tier 1 Sub-Total:	100
Tier 2	
Presentations and Demonstrations	25
Total Maximum Points	125

- 6) Vendor may be disqualified from any evaluation or award if Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.

B Overview of Procurement Process and Timetable

1. DHHS will make every effort to adhere to the following schedule:

Action	Responsibility	Date (2007)
Issue RFP	DHHS Office of Procurement and Contracting Services	February 14
Deadline for submission of questions from Vendors	Prospective Vendors	February 28 2:00 PM
Response to written questions/RFP amendments	DHHS Office of Procurement and Contracting Services	March 9
Proposal submission	Prospective Vendors	March 26, 5:00 PM
Complete Tier 1 proposal evaluation	Evaluation Committee	April 16
Complete Tier 2 presentations and demonstrations for selected candidates (optional)	Selected Prospective Vendors	April 23
Request clarifications/BAFOs	DHHS Office of Procurement and Contracting Services	May 01
Final selection	Evaluation Committee	May 07
Procurement approval	DHHS Office of Procurement and Contracting Services	May 15
Contract award	DHHS Office of Procurement and Contracting Services	May 16

2. Award of Contract. Qualified proposals will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS §143-135.9 and applicable administrative rules. The responsible Vendor whose proposal is most advantageous to the State, taking into consideration the evaluation factors herein, will be recommended for contract award. 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 proposal.
3. ITS has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve proposal award information electronically from our Internet web site: <http://www.ips.state.nc.us/ips/pubmain.asp>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-proposal number (30-DIRM-178-07), and then search. This information may not be available for several weeks dependant upon the complexity of the acquisition and the length of time to complete the evaluation process.
4. Protest Procedures: Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency (Statewide IT Procurement Office) at the address given on the first page of this document. Protests must be received in this office within 15 calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. **All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1009 - .1029.**

C Cost Proposal

This RFP seeks an all-inclusive, firm fixed-price Cost. All labor costs, direct and/or indirect, shall be determined and be included in the Cost Proposal. The cost and availability of all office space, equipment, travel, materials and supplies associated with performing services described within the Vendor's Proposal shall be determined and be included within the firm fixed-price Cost Proposal.

The Vendor shall **itemize** and provide a **detailed** description of **all** costs within the Cost Proposal Section tables provided in this section (i.e., Table 5 - Table 7). For Cost Components 2 through 6, the Vendor shall provide a price based on the business considerations within this RFP, and provide separately a price to increase the services as needed. (e.g., the State has estimated that it will need 200 location/asset management devices in the first year. However, the State may find that it actually needs 300 such devices in the first year. The Vendor shall identify a cost per device so that the State can determine the cost of the additional devices.)

If a Vendor proposes to perform any optional services above and beyond those required or specified by this RFP, the Vendor shall itemize those costs within the Cost Proposal. The costs for any services above and beyond those specified by this RFP shall be provided at a firm fixed-price and itemized at a detailed level to show all costs. The itemized cost of options should be placed in Table 6. The itemized cost of Value Added Services should be placed in Table 7.

Below is the required format for the Cost Proposal Section.

Table 5. Required Format for Cost Proposal

Cost Component	Quantity/ Unit	Unit Price	One Time Cost to State	Recur- ring Costs
(Do not place the cost of any options in this table. Use Table 6 for options.)				
Cost Component 1 - Project Management		\$	\$	\$
Cost Component 2 - Mobile Voice Communications				
Hardware and Software Cost		\$	\$	\$
Implementation and Integration Cost		\$	\$	\$
Training Cost		\$	\$	\$
Maintenance and Support Cost per year		\$	\$	\$
Sub-Total		\$	\$	\$
Cost Component 3 – Mobile Data Communications		\$	\$	\$
Hardware and Software Cost		\$	\$	\$
Implementation and Integration Cost		\$	\$	\$
Training Cost		\$	\$	\$
Maintenance and Support Cost per year		\$	\$	\$
Sub-Total		\$	\$	\$

Cost Component	Quantity/ Unit	Unit Price	One Time Cost to State	Recur- ring Costs
Cost Component 4 - Location/Asset Management		\$	\$	\$
Hardware and Software Cost		\$	\$	\$
Implementation and Integration Cost		\$	\$	\$
Training Cost		\$	\$	\$
Maintenance and Support Cost per year		\$	\$	\$
Sub-Total		\$	\$	\$
Cost Component 5 - Alarm Alerts/Notifications Management		\$	\$	\$
Hardware and Software Cost		\$	\$	\$
Implementation and Integration Cost		\$	\$	\$
Training Cost		\$	\$	\$
Maintenance and Support Cost per year		\$	\$	\$
Sub-Total		\$	\$	\$
Cost Component 6 - Mobile Personnel Security Management		\$	\$	\$
Hardware and Software Cost		\$	\$	\$
Implementation and Integration Cost		\$	\$	\$
Training Cost		\$	\$	\$
Maintenance and Support Cost per year		\$	\$	\$
Sub-Total		\$	\$	\$
Total		\$	\$	\$

Table 6. Required Format for Proposed Optional Costs

Optional Costs	Quantity /Unit	Unit Price	One Time Cost to State	Total Annual Cost to State
(This Section shall ONLY contain the costs of "Optional" goods or services.)				
OPTIONAL COST – OPTION 1:		\$	\$	\$
ITEMIZED (The Vendor shall itemize all costs associated with this option)		\$	\$	\$

Table 7. Required Format for Proposed Value Added Services Costs

Value Added Services Costs	Quantity /Unit	Unit Price	One Time Cost to State	Total Annual Cost to State
(This Section shall ONLY contain the costs of Value Added Services.)				
VALUE ADDED COST – OPTION 1:		\$	\$	\$
ITEMIZED (The Vendor shall itemize all costs associated with this value added option)		\$	\$	\$

D Instructions to Vendors

- a) Proposals submitted via the email or via facsimile (FAX) machine will not be accepted.
- b) **EXECUTION:** Failure to sign under EXECUTION section will render Vendor's proposal invalid.
- c) **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer must be valid for 120 days from the date of proposal opening.
- d) **FAILURE TO MEET PROPOSAL REQUIREMENTS:** While it is not anticipated that the awarded Vendor will fail to meet the proposal requirements, if such event occurs, the right is reserved to further evaluate the responses to this RFP and then to recommend an award to the next Vendor response that represents the best interest of the State.
- e) **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.
- f) **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.
- g) **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.

Online registration and other purchasing information are available through our Internet web site: <http://www.its.state.nc.us/ITProcurement/>.

- h) **ORGANIZATION:** Vendors are directed to carefully review Section VII Special Terms and Conditions and fully comply with the content and organizational requirements therein.
- i) **E-Procurement: This is an e-procurement solicitation.** See paragraph #46 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services. The Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina's statewide e-procurement initiative. It is the Vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature, the Vendor acknowledges acceptance of all terms and conditions including those related to e-procurement.
 - a. General information on the e-procurement service can be found at <http://eprocurement.ncgov.com>
 - b. Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service.
 - c. As of the RFP submittal date, the Vendor must be current on all e-Procurement fees. If the Vendor is not current on all e-Procurement fees, the State may disqualify the Vendor from participation in this RFP.

E General Conditions for Proposals

- 1) **Definitions, Acronyms and Abbreviations.** Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:
 - a) **A&A:** Authentication and authorization
 - b) **API:** Application Programming Interface
 - c) **CCTV:** Closed-circuit television
 - d) **CVE:** The Common Vulnerabilities and Exposures database
 - e) **CVSS:** The Common Vulnerability Scoring System
 - f) **DHHS:** NC Department of Health and Human Services
 - g) **DIRM:** Division of Information Resource Management
 - h) **DMH/DD/SAS:** Division of Mental Health, Developmental Disabilities, and Substance Abuse Services
 - i) **FCC:** Federal Communications Commission
 - j) **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
 - k) **IEEE:** Institute of Electrical and Electronic Engineers
 - l) **IMAP:** Internet Message Access Protocol
 - m) **IT:** Information technology
 - n) **ITS:** Office of Information Technology Services.
 - o) **IV:** Intravenous
 - p) **Open Market Contract:** A contract for the purchase of goods or services not covered by a term, technical or convenience contract.
 - q) **PBX:** Private branch exchange
 - r) **PC:** Personal computer
 - s) **PDA:** Personal digital assistant
 - t) **PSTN:** Public switched telephone network

- u) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
 - v) **RF:** Radio Frequency
 - w) **RFID:** Radio Frequency Identification
 - x) **RFP:** Request for Proposal
 - y) **SCIO:** State Chief Information Officer
 - z) **SMS:** Short Message Service
 - aa) **STA:** Statewide Technical Architecture
 - bb) **The State:** Is the State of North Carolina and its Agencies.
 - cc) **24x7:** A statement of availability of systems, communications and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications and/or supporting resources.
 - dd) **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation
 - ee) **VoIP:** Voice over Internet Protocol
- 2) **Read and Review.** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the State's intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor shall request a clarification from the State's contact person listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.
- 3) **Vendor Responsibility.** The Vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The Vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs therefore. Vendors are encouraged to present explanations of benefits and merits of their proposed Solutions together with any accompanying services, maintenance, warranties, value added services or other criteria identified herein.
- 4) **Oral Explanations.** The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said Vendor's offer. Agency contact regarding this RFP with any Vendor may be grounds for cancellation of this RFP.
- 5) **Insufficiency of References to Other Data.** Only information that is received in response to this RFP will be evaluated. Reference to information previously submitted will not suffice as a response to this solicitation.
- 6) **Conflict of Interest.** Applicable standards may include: N.C.G.S. §§ 147-33.100, 14-234, 133-32. The Vendor shall not knowingly employ, during the period of this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
- 7) **Contract Term.** A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be one (1) year, 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 two (2) additional one (1) year periods at its sole discretion.
- 8) **Effective Date.** This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s) by the State purchasing official; and that date has arrived or passed. The State shall not be responsible for reimbursing Vendor for goods provided and services rendered prior to the appropriate signatures and the arrival of the effective date of the Contract. 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.

- 9) **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 goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.
- 10) **Historically Underutilized Businesses.** Pursuant to General Statute 143-48 and Executive Order #150, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: <http://www.doa.state.nc.us/doa/hub/>.
- 11) **Clarifications/Interpretations.** Any and all amendments or revisions to this document shall be made by written addendum from the IT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 12) **Rights Reserved.** While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:
- a) waive any formality;
 - b) amend the solicitation;
 - c) cancel or terminate this RFP;
 - d) reject any or all proposals received in response to this document;
 - e) waive any undesirable, inconsequential or inconsistent provisions of this document, which would not have significant impact on any proposal;
 - f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one (1) or more Vendors;
 - g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
 - h) if all responses are deficient, determine whether Wavier of Competition criteria may be satisfied, and if so, negotiate with one (1) or more Vendors.
- 13) **Alternate Bids.** Vendor may submit alternate bids for various levels of service(s) or products meeting specifications. Alternate bids must specifically identify the RFP requirements and advantage(s) addressed by the alternate bid. Any alternate proposals must be clearly marked with the legend as shown herein. Each proposal must be for a specific set of services or products and bid at specific pricing. If a Vendor chooses to respond with various service or product offerings, each must be bid with a different price and a separate proposal response. Vendors may also provide multiple proposals for software or systems coupled with support and maintenance options, provided, however, all proposals must satisfy the specifications.

Alternate bids must be clearly marked "Alternate bid for 'name of Vendor'" and numbered sequentially with the first bid if separate proposals are submitted. This legend must be in bold type of not less than 14-point type on the face of the bid, and on the text of the alternative proposal.

- 14) **Co-Vendors.** Vendors may submit offers as partnerships or other business entities. Such partners or other "co-Vendors", if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one (1) Vendor. Any requirements for references, financial statements or similar reference materials shall mean all such partners or co-Vendors.
- 15) **Submitting a Proposal.** Each Vendor submitting a proposal warrants and represents that:

- a) The proposal is based upon an understanding of the business considerations described in this RFP.
 - b) Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendors in the preparation and presentation of their proposals.
- 16) All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and Vendor resulting from this RFP process.
- 17) A proposal may not be unilaterally modified by the Vendor for a 120 day period following the delivery of the proposal, or of any best and final offer.

Section VI. Proposal Content and Organization

A General Information

Any Proposal that does not adhere to the requirements of this Section or any Section within this RFP may be deemed non-responsive and rejected on that basis. Responses that do not meet the full intent of all requirements listed within this RFP may be subject to point reductions during the evaluation process or may be deemed non-responsive.

If any relevant and material information is not provided in a proposal, the proposal may be rejected from consideration and evaluation. Proposals will be considered and evaluated based upon the Vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.

Information and Descriptive Literature: Vendor must furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this proposal, each Vendor must submit with their proposal draft documentation, draft plans, drawings, sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous proposal will not satisfy this provision. Proposals that do not comply with these requirements may be rejected.

The proposal shall be prepared in a straightforward and brief manner to ensure the most effective and equitable evaluation of all materials received. The Offeror shall not repeat information in the proposal. If information is appropriate for more than one (1) Section of the Proposal, the Offeror shall include it in one (1) Section and refer to it in the other Sections.

B Proposal Content and Format

- 1 The proposals shall be organized per Item 2.2 Table of Contents within this Section and where appropriate in the exact order in which the requirements and/or desirable performance criteria are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. Each page shall be numbered. The proposal shall contain a table of contents, which cross-references the RFP requirement and the specific page of the response in the Vendor's proposal. All proposals must be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each Section.
- 2 The Proposal shall include the following information:
 - 2.1 Letter of Transmittal - Each proposal shall be accompanied by a letter of transmittal that provides the following information:
 - 2.1.1 the submitting Vendor Name;
 - 2.1.2 the submitting Vendor Address;
 - 2.1.3 the name, title, telephone and fax numbers and e-mail address of the person authorized by the Vendor to contractually obligate the Vendor;
 - 2.1.4 the name, title, telephone and fax numbers and e-mail address of the person authorized to negotiate the contract on behalf of the Vendor;
 - 2.1.5 the names, titles, telephone and fax numbers and e-mail addresses of persons to be contacted for clarification; and
 - 2.1.6 acknowledgement of the receipt of any and all amendments and or addenda to this RFP.
 - 2.2 Table of Contents
 - Execution Page of this RFP and any Addendum(s)
 - Letter of Transmittal
 - Proposal Summary
 - Corporate Capabilities
 - Solution

Complete Cost Response

Formal Project Management methodology including all standards and sample templates

Initial Drafts of the Deliverables

Project Management Plan

Project Work Plan

Staffing and Organizational Plan

Risk Management Plan, Matrix and Log

Communication Management Plan and Log

Quality Management Plan

Service Level Agreement

Implementation Plan

Security Plan

Disaster Recovery Plan

Configuration Management Plan

Test Plan

Training Plan

- 3 Proposal Summary – A statement indicating the Vendor's understanding of the objectives of this RFP.
- 4 Corporate Capabilities – This Section shall describe the Vendor's Corporate Experience and describe how that experience is relevant to this RFP.
 - 4.1 This Section shall contain all relevant and material information relating to the Vendor's organization, personnel and experience that would substantiate its qualifications and capabilities to perform the services and/or provide the goods described in this RFP.

The Offeror shall provide a corporate organizational chart that clearly identifies where this project would be placed within the corporate organization.

 - 4.1.1 The Offeror shall provide a detailed project organization chart that clearly depicts the proposed project structure. To satisfy this requirement, the Vendor may reference the initial Draft of the Organization Management Plan.
 - 4.1.2 The Offeror shall provide, as an attachment to the response, the resumes for ALL the proposed personnel clearly depicting the relevant experience of the proposed personnel with this type of project. The Offeror is limited to no more than two (2) pages per resume.
 - 4.2 **Financial Information:** Provide a Comprehensive Insight Report from Dun and Bradstreet, stating the financial condition and credit rating of the company.

Note: The State may, in its sole discretion, accept evidence of financial stability other than the Comprehensive Insight Report for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of the contract award.
 - 4.3 Vendor Utilization of Workers outside The United States: In accordance with Executive Order #60, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers. The State of North Carolina will evaluate the additional risks, costs and other factors associated with such utilization prior to making an award for any such Vendor's proposal. The Vendor shall provide the following for any proposal or actual utilization or contract performance:

- 4.3.1 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
 - 4.3.2 The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors;
 - 4.3.3 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
 - 4.3.4 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
 - 4.4 The Vendor must meet the following certification requirements:
 - 4.4.1 Present evidence that the Vendor complies with the industry and/or State Standards.
 - 4.4.2 Certification for meeting this requirement may be satisfied by one (1) or more of the following:
 - 4.4.2.1 Provide references of at least one (1) project or engagement completed within the past two (2) years where industry and/or State standards were followed.
 - 4.4.2.2 Submit (or make available for review) processes that follow the industry and/or State Standards.
 - 4.4.2.3 Submit a corporate policy that dictates and commits compliance with the industry and/or State Standards for all projects or engagements with the State.
 - 4.4.3 The State may, at its discretion, verify and validate that one (1) or more of the above criteria are met, including the review and audit of work papers, deliverables, life-cycle methodologies, references or other documentation (including certification artifacts).
 - 4.5 Vendors must include references from no more than three (3) clients where the Vendor provided similar service in size and / or scope to those described in this RFP. Reference contact information is required. The State will contact references directly.
 - 4.6 Conflict of Interest. Applicable standards may include: NCGS. § 147-33.100, 14-234 and 133-32. The Vendor shall not knowingly employ, during the period of this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing services involving, or similar to, the scope and nature of this solicitation or the resulting contract. The Vendor shall:
 - 4.6.1 Provide a statement that no assistance in preparing the response was received from any current or former employee of the State of North Carolina whose duties relate(d) to this RFP, unless such assistance was provided by the State employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP.
 - 4.6.2 State if the Vendor or any employee of the Vendor is related by blood or marriage to an Agency employee or resides with an Agency employee. If there are such relationships, list the names and relationships of said parties. Include the position and responsibilities within the Vendor's organization of such Vendor employees; and
 - 4.6.3 State the employing State Agency, individual's title at that State Agency and termination date.
- 5 Solution – This Section shall contain detailed information describing the Vendor's Solution as follows.
- 5.1 Detailed Overview of the Solution(s)
 - 5.1.1 The Vendor shall provide an Overview of the Solution proposed.

- 5.1.2 The Vendor shall provide both physical and logical models (documents/drawings) of: all network, system and security drawings as part of the detailed overview. The documents/drawings shall include all points of ingress and egress to and from all components within the design.
- 5.2 Detailed Response to the Business Considerations by Component
 - 5.2.1 The Vendor shall provide a detailed description of all functionality of the Solution
 - 5.2.2 The Vendor shall provide detailed network topology, security (ingress and egress points, ports, etc.), database and system architectural design documentation to clearly depict the Solution presented. Both logical and physical diagrams are required.
 - 5.2.3 The Vendor shall provide the minimum hardware specifications for the Solution proposed.
 - 5.2.4 The Vendor shall provide a clear and detailed explanation of any additional functionality
 - 5.2.5 The Vendor shall provide a clear and detailed explanation of the scalability and limitations of the Solution.
 - 5.2.6 The Vendor shall provide a list of all hardware, software, limitations, security specifications and any assumptions for the Hosting environment.
 - 5.2.7 The Vendor shall provide a detailed response to the Maintenance and Operations, Modifications, Help Desk, Release Support and Upgrades, including the draft performance-based SLA.
- 5.3 Detailed Response to the Project Phases and Deliverables
 - 5.3.1 The Vendor shall clearly detail how each requirement within this sub-section below will be addressed.
 - 5.3.2 The Vendor shall provide the actual preliminary draft of the following documentation:
 - 5.3.2.1 Project Management Plan
 - 5.3.2.2 Project Work Plan (the preliminary draft shall identify ALL phases, activities, tasks, milestones, timelines and resource requirements for the project. The Work Plan must be detailed to show all tasks necessary to complete the project. Each task must not exceed 40 hours in work effort.)
 - 5.3.2.3 Staffing and Organizational Plan
 - 5.3.2.4 Implementation Plan
 - 5.3.2.5 Issues Management Plan and Log
 - 5.3.2.6 Change Management Plan and Log
 - 5.3.2.7 Risk Management Plan, Matrix and Log
 - 5.3.2.8 Communication Management Plan and Log
 - 5.3.2.9 Quality Management Plan
 - 5.3.2.10 Test Plan
 - 5.3.2.11 Training Plan
 - 5.3.2.12 Security Plan
 - 5.3.2.13 Disaster Recovery Plan
 - 5.3.2.14 Transition Plan
 - 5.3.2.15 Configuration Management Plan
 - 5.3.2.16 Detailed Infrastructure Design
 - 5.3.2.17 Detailed System Design
- 5.4 Detailed Response to the Project Deliverables Schedule
- 5.5 Detailed Response to the Payment Terms
- 5.6 Detailed Response to the Performance Standards

5.7 Detailed Response to the Roles and Responsibilities and Reassignment

- 6 The Vendor's Cost Proposal shall be set out in this section of the Vendor's proposal, using the cost tables found in Section IV.C of this RFP.

NO PART OF THE VENDOR'S COST PROPOSAL AND NONE OF THE VENDOR'S COST INFORMATION SHOULD APPEAR IN ANY OTHER PART OF THE VENDOR'S WRITTEN PROPOSAL.

NOTE: The Table of Contents described in Section VI.B. Item 2.2 includes several items that are not mentioned here:

6.1 Formal Project Management methodology including all standards and sample templates

6.2 Initial Drafts of Deliverables

- 7 Vendors may attach other materials that they feel may improve the quality of their Responses. Such materials should be provided in an appendix at the end of the proposal.

- 8 Value Added and/or Optional Services. Vendors are encouraged to provide descriptions of any Value Added and/or Optional Services. Any Value Added and/or Optional Services must be set off in bold type of not less than 14-points if embedded within the solution. Value Added and/or Optional Services may comprise one (1) or more services identified in a Statement of Work, if any, or other offerings of the Vendor. The State is not obligated to accept or request any such services. For each such service offered by Vendor, also describe the service in a separate response section titled "Value Added and/or Optional Services" illustrating the additional value of the service to the State within the proposal submitted.

- 9 Certifications. The selected Vendor (Contractor) will be required to sign the following documents.

9.1 **Attachment 1 – CERTIFICATION REGARDING LOBBYING:** This certification requiring the Vendor's signature and signature date is required to be attached to each executed contract that is funded in whole or partially with Federal dollars. Use only when required by Federal authorities.

9.2 **Attachment 2 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS:** This certification requiring the Vendor's signature and signature date is required to be attached to each executed contract that is funded in whole or partially with Federal dollars. Use only when required by Federal authorities.

9.3 **Attachment 3 – CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:** This certification requiring the Vendor's signature and signature date is required to be attached to each executed contract when required by the State

Section VII. Special Terms and Conditions

1. Disclosure of Litigation – The Vendor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.
 - a) The Vendor shall notify the State in its bid proposal, if it, or any of its subcontractors or their officers, directors, or key personnel who may provide services under any contract awarded pursuant to this solicitation, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Vendor shall promptly notify the State of any criminal litigation, investigations or proceeding involving Vendor, any subcontractor or any of the foregoing entities' then current officers or directors during the term of this Contract or any Scope Statement awarded to Vendor.
 - b) Vendor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding or judgments against it or its subcontractors during the three (3) years preceding its bid proposal, or which may occur during the term of any awarded to Vendor pursuant to this solicitation, that involve (1) services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor; or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities; or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any Federal, State or Local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
 - c) All notices under subsection A and B herein shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the ITS General Terms and Conditions annexed to the solicitation. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.
2. Criminal Conviction – In the event the Vendor, an officer of the Vendor, or an owner of a 25% or greater share of the Vendor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of North Carolina employees; convicted under State or Federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Vendor's business integrity and such Vendor shall be prohibited from entering into a contract for goods or services with any department, institution or agency of the State.
3. Security and Background Checks - The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements.
4. Assurances - In the event that criminal or civil investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:
 - a) the ability of the Vendor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions; or
 - b) whether the Vendor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of law, regulation or public policy, then the Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: the Vendor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, and the Vendor or its subcontractors will not engage in conduct in performing services

under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

5. **Confidentiality of Data and Information.** - All financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Vendor in order to carry out this Contract, or which become available to the Vendor in carrying out this Contract, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Vendor. If the methods and procedures employed by the Vendor for the protection of the Vendor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section. The Vendor shall not be required under the provisions of this section to keep confidential (1) information generally available to the public, (2) information released by the State generally or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.
6. **Transition Assistance** – If this Contract reaches the end of its term, or is canceled prior to its expiration, for any reason, the Vendor must provide for up to three (3) months after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State in accordance with the Transition Plan agreed upon by the State and Vendor, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding its expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance. If the State cancels this Contract for cause, then the State will be entitled to offset the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.
7. **For contracts for goods:** Any item offered or shipped in response to this proposal shall be the same model indicated by its external label and source of manufacture. All component parts inside the system must be manufacturer approved. Any exceptions to this requirement must be made known to the State or Contracting Agency prior to delivery, and such goods or materials shall be considered non-conforming goods subject to rejection until written notice of acceptance is provided by the State. The items offered must represent the labeled manufacturer's products and specifications and be subject to the manufacturer's warranty unless terms more favorable to the State or Contracting Agency are agreed in writing prior to shipment. Any substitutions, alterations or modifications, internal or external, must be noted and described in detail. The State or Contracting Agency reserves the right to request an inspection by a representative of the manufacturer whose label appears on the item to verify its authenticity.
8. **Warranty** - The bidder Vendor warrants to the State that all items furnished will be new and of good material and workmanship, and agrees to replace any items which fail to comply with the specifications by reason of defective material or workmanship under normal use, free of State's negligence or accident for a minimum of 90 days from date of acceptance. Such replacement shall include transportation costs free of any charge to the State. This statement is not intended to limit any additional coverage, which may normally be associated with a product.
10. **Maintenance** - The vendor must offer at least two additional years of annual maintenance for use after the initial one-year warranty period expires. The State may elect to receive approved provider's then-current maintenance service upon payment of applicable annual maintenance fees, beginning at the end of the warranty period. Maintenance services may be renewed upon written notice by the State prior to the contract anniversary date. Escalation of annual maintenance fees shall not exceed 5% per year. Any maintenance agreements shall be subject to the terms

Section VIII. Contractual Terms and Conditions

North Carolina Information Technology Procurement Office

General Terms and Conditions for Goods and Related Services

Definitions: As used herein;

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

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

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

- 2) **Warranties:** Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.
- 3) **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.
- 4) **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.
- 5) **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).
- 6) **Software License (for internal embedded software, firmware):** 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 (1) 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.
- 7) **Maintenance/Support Services:**, For the first year and all subsequent Contract years, Vendor agrees to provide the following services for the current version and one (1) previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:

- a) **Error Correction.** Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Program. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or effect maintenance services under this Paragraph.
 - b) Vendor shall notify the State of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
 - c) **Updates.** Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, shall be governed by the provisions of this Contract.
 - d) **Telephone Assistance.** Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four (4) hours, for calls made at any time.
- 8) **Travel Expenses:** Vendor shall not be reimbursed for travel expenses separately arising under the performance of this Contract. This RFP is an all-inclusive, firm fixed-price Cost. All labor costs, direct and/or indirect, shall be determined and be included in the Cost Proposal. The cost and availability of all office space, equipment, travel, materials and supplies associated with performing services described within the Vendor's Proposal shall be determined and be included within the firm fixed-price Cost Proposal.
- 9) **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.
- 10) **Prohibition against Contingent Fees and Gratuities:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the bidder(s) or Vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030 or other provision of law.
- 11) **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.

12) Payment Terms: :

- a) Project Management Fee – The fixed cost Project Management Fee shall be paid to the Vendor in monthly installments. Each monthly installment of the Project Management Fee shall be equal to the full amount of the Project Management Fee divided by the number of months scheduled for the completion of the Project, less any performance reductions in compensation assessed by the State pursuant to Section IV.B. Formal Acceptance Process and Performance Standards, Sub-Section 1 Formal Acceptance Process.
- b) Hardware and Software Cost – Fifty percent (50%) of the total one-time fixed Cost Component (See Section C: Cost Proposal) cost of all hardware and software for that Cost Component shall be paid to the Vendor upon the completion of all installation/implementation activities and formal acceptance of the Cost Component by the State. The remaining fifty percent (50%) of each Cost Component shall be withheld until: all the Cost Components are completely implemented and (b) the State has determined that the system is stable; and (c) the Vendor has met all Service Level Agreement performance standards for two (2) consecutive months.
- c) Implementation and Integration Cost – Fifty percent (50%) of the total one-time fixed Cost Component (See Section C: Cost Proposal) cost of all implementation and integration activities for that Cost Component shall be paid to the Vendor upon the completion of all implementation and integration activities and formal acceptance of the Cost Components by the State. The remaining amount fifty percent (50%) shall be withheld until: all the Cost Components are completely implemented and (b) the State has determined that the system is stable; and (c) the Vendor has met all Service Level Agreement performance standards for two (2) consecutive months.
- d) Training Cost – Fifty percent (50%) of the total one-time fixed cost for all training for each Cost Component (except transition training) shall be paid to the Vendor upon the completion of all training activities and formal acceptance by the State. The remaining amount fifty percent (50%) of each Cost Component shall be withheld until all (the entire Solution) the training is (a) completed and (b) the State has accepted the completion of all training activities.
- e) Maintenance and Support Cost – The annual contract subtotal for maintenance and support activities shall be divided into twelve (12) equal monthly payments. The beginning of the twelve (12) month maintenance and support period shall be on the first full month after all of the Solution is completely live and operational. For each one (1) year extension, payments shall be divided into twelve (12) equal payments. The State reserves the right to withhold maintenance and support payments if the Vendor does not comply with the commitments in the Service Level Agreements during this contract or any contract amendments.

For any month during which the Solution was planned to be operational in the production environment when the system is not operational for any non scheduled down time, the monthly maintenance and support payment for that month shall be forfeited, in whole or in part, at the sole discretion of the State. For any month during which the Vendor does not comply with the terms of the SLA(s), the monthly payment for that month shall be reduced by the percentages agreed to in the SLA(s) at the State's option.

- 13) Acceptance Criteria:** See Section IV. B. Formal Acceptance Process and Performance Standards, Sub-Section 1 Formal Acceptance Process 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.

- 14) **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.
- 15) **Reserved.**
- 16) **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.
- 17) **Confidentiality:** In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL**”. By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.
 - a) **Care of Information:** Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.
 - b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
 - c) **Nondisclosure:** Vendor agrees and specifically warrants that it, its officers, directors, principals and employees and any subcontractors, shall hold all information received during performance of this

Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

- 18) **Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods, software, data and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina and must be kept confidential or returned to the Agency, to the State IT Procurement Office, or destroyed as required by the State. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. The State's solicitation document may supplement or substitute this definition and the requirements set forth in this Paragraph. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.
- 19) **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.
- 20) **Patent, Copyright and Trade Secret Protection:**
 - a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.
 - b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.
 - c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a United States patent or copyright, or violates a trade secret. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - d) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
 - e) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
 - f) Should any services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright or a trade secret, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become non-infringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every

reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

- g) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.
 - h) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.
- 21) **Access to Persons and Records:** Pursuant to N.C. General Statute 147-64.7, the Agency, the State Auditor, appropriate Federal officials, and their respective authorized employees or agents are authorized to examine all books, records and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution or other Agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Vendor shall retain any such books, records and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by Federal or State law or regulation.
- 22) **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.
- 23) **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.
- 24) **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.

- 25) **Default:** In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 13) herein, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) and the obligation to informally resolve disputes as provided in Paragraph 24) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.
 - b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
 - c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.
- 26) **Waiver of Default:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 27) b) hereinbelow.
- 27) **Termination:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.
- a) The parties may mutually terminate this Contract by written agreement at any time.
 - b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
 - i) Termination for Cause: In the event any goods, software or service furnished by the Vendor during performance 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 28) and 29) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
 - ii) Termination for Convenience without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in

conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

28) Limitation of Vendor's Liability:

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two (2) times the value of the Contract. Provided, however, that the State's Solicitation Documents or the Supplemental Terms and Conditions for Software or Services, if any, may increase Vendor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

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

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

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

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

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 proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby

rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

- 32) **Reserved.**
- 33) **Time is of the Essence.** Time is of the essence in the performance of this Contract.
- 34) **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.
- 35) **Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.
- 36) **Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
- 37) **Notices:** Any notices required under this Contract shall 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.
- 38) **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.
- 39) **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.
- 40) **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.
- 41) **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.
- 42) **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.

- 43) **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.
- 44) **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.
- 45) **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.
- 46) **Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.
- a) **The successful Vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.
- b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.
- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.
- 47) **Reserved.**

Section IX. Supplemental Terms and Conditions for Software and Services

North Carolina Office of Information Technology Supplemental Terms and Conditions for Software and Services

Supplement: The additional terms and conditions set forth herein shall supplement the General Terms and Conditions for Goods and Related Services. In the event of a conflict between this Supplement and the General Terms and Conditions, or any other document, the order of precedence shall be determined by the State's solicitation document(s).

- 1) **License Grant:** This paragraph recites the scope of license granted, if not superseded by a separate licensing agreement as follows:
 - a) Vendor grants to the State, its Agencies and lawful customers a non-exclusive, non-transferable and non-sublicensable license to use, in object code format, Vendor's software identified in the solicitation documents, Vendor's Statement of Work (SOW), or an Exhibit thereto executed by the parties ("Software"), subject to the restrictions set forth therein such as the authorized computer system, the data source type(s), the number of target instance(s) and the installation site. Use of the Software shall be limited to the data processing and computing needs of the State, its Agencies and lawful customers. This license shall be perpetual, unless terminated as provided herein. The State agrees not to distribute, sell, sublicense or otherwise transfer copies of the Software or any portion thereof. For purposes of this Agreement, a State Entity shall be defined as any department or agency of the State of North Carolina, which is controlled by or under common control of the State or who is a lawful customer of the State pursuant to Article 3D of Chapter 147 of the General Statutes.
 - b) Vendor shall provide all encryption or identification codes or authorizations that are necessary or proper for the operation of the licensed Software.
 - c) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, for archival or emergency purposes, for back up purposes, for use in preparing derivative works if allowed by the solicitation documents or statements of work, or to replace a worn copy.
 - d) The State may modify non-personal Software in machine-readable form for its internal use in merging the same with other software program material. Any action hereunder shall be subject to uses described in this paragraph, the restrictions imposed by Paragraph 2, and applicable terms in the solicitation documents or statements of work.
- 2) **Restrictions.** State's use of the Software is restricted as follows:
 - a) The license granted herein is granted to the State and to any political subdivision or other entity permitted or authorized to procure Information Technology through the Office of Information Technology. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents.
 - b) No right is granted hereunder to use the Software to perform services for commercial third parties (so-called "service bureau" uses). Services provided to other State Departments, Agencies or political subdivisions of the State are permitted.
 - c) The State may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and State will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or statements of work,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.

- d) State shall not remove, obscure or alter Vendor's copyright notice, trademarks or other proprietary rights notices affixed to or contained within the Software.
- 3) **Vendor's Retained Rights:** Subject only to the rights granted to State hereunder, Vendor retains all right, title and interest in and to the Software and all copies of the Software, including without limitation all modifications, enhancements, upgrades and new versions with respect to any of the foregoing, all patent rights, copyrights and trade secret rights embodying any of the foregoing, and all know-how, concepts, inventions and ideas related to the foregoing. State shall provide Vendor with access to State's facilities, at reasonable times and upon reasonable notice, to verify State's compliance with the terms of this Agreement.
- 4) **Support or Maintenance Services:** This paragraph recites the scope of maintenance services due under the license granted, if not superseded by a separate licensing and maintenance agreement or as may be stated in the solicitation documents. Subject to payment of a Support Service or Maintenance Fee stated in the solicitation documents for the first year and all subsequent years, if requested by the State, Vendor agrees to provide the following support services ("Support Services") for the current version and one (1) previous version of the Software commencing upon delivery of the Software:
- a) **Error Correction:** If the error conditions reported by the State pursuant to the General Terms and Conditions are not corrected in a timely manner, the State may request a replacement copy of the licensed Software from Vendor. In such event, Vendor shall then deliver a replacement copy, together with corrections and updates, of the licensed Software within 24 hours of the State's request at no added expense to the State.
 - b) **Other Agreement:** This Paragraph 5 may be superseded by agreement provided that:
 - i) Support and maintenance services shall be fully described in a separate agreement annexed hereto and incorporated herein
 - c) **Temporary Extension of License:** If any licensed Software or CPU/computing system on which the Software is installed fails to operate or malfunctions, the term of the license granted shall be temporarily extended to another CPU selected by the State and continue until the earlier of:
 - i) Return of the inoperative CPU to full operation, or
 - ii) Termination of the license.
 - d) **Encryption Code:** Vendor shall provide any temporary encryption code or authorization necessary or proper for operation of the licensed Software under the foregoing temporary license. The State will provide notice by expedient means, whether by telephone, e-mail or facsimile of any failure under this paragraph. On receipt of such notice, Vendor shall issue any temporary encryption code or authorization to the State within 24 hours, unless otherwise agreed.
 - e) **Updates.** Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Updates") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.
 - f) **Telephone Assistance.** Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four (4) hours, for calls made at any time.
- 5) **Termination of Support or Maintenance:** If the State fails to pay Support or Maintenance Services for the Software or choose not to pay for Support or Maintenance Services, the State may continue to use the Software pursuant to the license granted hereunder, but will not be entitled to receive routine Support Services for such Software. If the State does not subscribe or purchase Support or Maintenance Services effective with the date of this Contract, Support or Maintenance Services may be subsequently subscribed or purchased at any time during the term of this Contract by payment of Support Service or Maintenance Fees at Vendor's then current prices. During the term of this Agreement, the State may also purchase implementation services, consulting and training from Vendor at Vendor's then current prices.

- 6) **Program Retirement:** Vendor retains the right to retire a version of the Program and stop providing Maintenance, Updates or Services, upon providing 180 day written notice to the State of its intent to do so. The decision to stop maintaining a version of the Program is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Program provided to the State and if the State has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, a newer version of the Program that supports substantially the same functionality as the licensed version of the Program. Newer versions of the Program containing substantially increased functionality will be made available to the State for an additional fee.
- 7) **RESERVED:**
- 8) **Payment Terms:** The total License Fee and the Support Service or Maintenance Fee (provided the State subscribes or purchases such services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent contract years, if any, will be invoiced annually 60 days prior to the anniversary date beginning each subsequent year. Increases in Vendor's Contract price for Support Services or Maintenance shall not exceed five percent (5%) per year following the first Contract year. Payment terms for software are Net 30 days after receipt of correct invoice or acceptance of software; whichever is later. Payment terms for services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule. The using agency is responsible for all payments under the contract.
- 9) **Acceptance:** Acceptance testing is required for all Vendor supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of software or services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of software or services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within a reasonable time following installation of any software deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.
- 10) **Warranty Terms:** Notwithstanding anything in this Contract or Exhibit hereto to the contrary, Vendor shall assign warranties for any Deliverable supplied by a third party to the State.
- a) Vendor warrants that any Software or Deliverable will operate substantially in conformity with prevailing specifications as defined by the current standard documentation (except for minor defects or errors which are not material to the State) for a period of 90 days from the date of acceptance ("Warranty Period"), unless otherwise specified in the Solicitation Documents. If the Software does not perform in accordance with such specifications during the Warranty Period, Vendor will use reasonable efforts to correct any deficiencies in the Software so that it will perform in accordance with or substantially in accordance with such specifications.
 - b) Vendor warrants to the best of its knowledge that:
 - i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
 - iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.
 - iv) The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software's ability to operate.
 - c) UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE

TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.

- 11) **Escrow of Code:** Vendor has established an Escrow Agreement ("Escrow Agreement") with a third party escrow agent acceptable to the State, as required in the solicitation documents. Within thirty days from the Effective Date of the Agreement, Vendor will add the State as a beneficiary to such Escrow Agreement. In the event (i) this Agreement is terminated due to insolvency or the filing of involuntary bankruptcy proceedings pursuant to Chapter 7 of the U.S. Bankruptcy Code and (ii) Vendor no longer offers support or maintenance services for the Software (both (i) and (ii) constituting the release condition ("Release Condition") under the Escrow Agreement), the Software code deposited in accordance with the Escrow Agreement (the "Deposit Materials") shall be delivered to the State and the State shall be granted a license to use the Deposit Materials solely to repair, maintain and support the Software licensed to State pursuant to this Agreement. The license to the Deposit Materials under this Section shall terminate upon the termination or cure of the Release Condition.
- 12) **Confidentiality:** Vendor shall employ security measures and standards, including encryption technologies, as may be necessary or proper, and as mutually agreed by the State and Vendor during performance of this Agreement. Vendor and its agents, if any, shall not have access to any information except as required to perform Vendor's obligations under this Contract.
- 13) **State Property and Intangibles Rights:** The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data and other work products first originated and prepared by the Vendor for delivery to the State (the "Deliverables"). To the extent that any Vendor Technology is contained in any of the Deliverables, 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 internal business purposes. 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 to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.
- 14) **License Rights:** All licenses granted to either party include the right to make, have made, use, have used, import, offer to sell, sell, lease or otherwise transfer any apparatus, or practice and have practiced any method and shall include the right to grant, directly or indirectly, revocable or irrevocable sublicenses to affiliates of such party; and nothing contained in this contract shall be deemed to grant any license under any other patents or patent applications arising out of any other inventions of either party.
- 15) **Default:** If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 13 of the General Terms and Conditions for Goods and Related Services is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State's options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract pursuant to the Default terms in the General Terms and Conditions.
- 16) **Limitation of Liability for Software Deliverables:**
 - a) Where equipment is under the State's exclusive management and control, Vendor shall not be liable for any damages caused by the State's failure to fulfill any State responsibilities including, without limitation, those relating to assuring the proper use, management and supervision of the equipment and programs, audit controls, operating methods, office procedures or for establishing all property checkpoints necessary for the State's intended use of the machines.
 - b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall not exceed two (2) times the value of the contract, but in no event

shall the liability for damages be less than the total value of the contract.

- c) WITH THE EXCEPTIONS OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT ACTIONS, THE STATE'S CONSTITUTIONAL RIGHTS AS A SOVEREIGN, AND PENALTIES IMPOSED UPON THE STATE BY ANY FEDERAL ENTITY OR EXPENDITURES OF PUBLIC FUNDS REQUIRED OR RESULTING FROM AN OPERATIONAL FAILURE OF THE DELIVERABLE(S) OR SERVICES PROVIDED HEREUNDER, BUT NOTWITHSTANDING ANY OTHER TERM TO THE CONTRARY CONTAINED IN THIS CONTRACT, NEITHER PARTY NOR THEIR RESPECTIVE AFFILIATES SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES (I) FOR ANY CLAIM BASED UPON ANY THIRD PARTY CLAIM, (II) FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS OR OTHER ECONOMIC CONSEQUENTIAL DAMAGES, WHETHER RESULTING FROM DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR OTHERWISE, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (III) FOR ANY PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE WHATSOEVER.

- 17) **Vendor Obligations:** In the event the State does not perform the State Obligations in a timely manner; Vendor may revise the applicable SOW and/or amount it is charging for Services, and present it as a Change pursuant to Paragraph 31 of the General Terms and Conditions for Goods and Related Services, or terminate this Agreement, at Vendor's option. For each SOW, Vendor will designate one (1) Vendor point of contact that shall be responsible for responding to the State's questions and issues relating to the Services. The State understands and agrees that Vendor may subcontract with third parties to perform all or part of the Services in conformance with Paragraph 4 of the General Terms and Conditions for Goods and Related Services.
- 18) **Qualified Personnel:** Each party shall provide sufficient, qualified, knowledgeable personnel capable of: (i) performing obligations set forth in this Agreement and each SOW; (ii) making timely decisions necessary to move the Services forward; (iii) participating in the project and assisting Vendor in rendering the Services; and (iv) facilitating development, testing and implementation of Vendor software, if applicable. Vendor warrants that qualified personnel will perform the services in a professional manner. As used in this Paragraph, "professional manner" means that the personnel performing the services will be of a skill and competence consistent with prevailing norms of company providers in the information technology industry.
- 19) Vendor shall not be responsible for any alleged breach of the foregoing Paragraph 16) that is attributable to (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the Vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.
- 20) **Transportation:** Transportation of software shall be FOB Destination unless delivered by the Internet or file transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

Section X. Attachments

Attachment 1

CERTIFICATION REGARDING LOBBYING

Department of Health and Human Services
Division of Information Resource Management

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federally funded contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants and contracts under grants, loans, and cooperative agreements) who receive Federal funds of \$100,000.00 or more and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Signature

Title

Organization

Date

(Certification signature should be same as Contract signature.)

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-
LOWER TIER COVERED TRANSACTIONS**

Department of Health and Human Services
Division of Information Resource Management

(Note: The phrase "prospective lower tier participant" means providers under contract with the Department.)

1. By signing and submitting this document, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originates may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not

required to exceed that which does a prudent person in the ordinary course of business dealings normally possess.

9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.
10. The prospective lower tier participant certifies, by submission of this document, that neither it nor its principals is presently debarred, suspend, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency.
11. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature

Title

Organization

Date

(Certification signature should be same as Contract signature.)

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Department of Health and Human Services
Division of Information Resource Management

I. By execution of this Agreement, the Vendor certifies that it will provide a drug-free workplace by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Vendor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The Vendor's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee be engaged in the performance of the agreement is given a copy of the statement required by paragraph (a);

D. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the agreement, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

E. Notifying the Department within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee whom is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or Local health, law enforcement or other appropriate agency; and
- (3) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

II. The site(s) for the performance of work done in connection with the specific agreement are listed below:

1. _____
(Street address)

(City, county, state, zip code)

2. _____
(Street address)

(City, county, state, zip code)

Vendor will inform the Department of any additional sites for performance of work under this agreement.

False certification or violation of the certification shall be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment (Section 34 CFR 85.615 and 34 CFR 86.620).

Signature

Title

Agency/Organization

Date

(Certification signature should be same as Contract signature.)