



GOODS AND SERVICES AGREEMENT

For

ENTER SOLICITATION/CONTRACT TITLE

Between

STATE OF NORTH CAROLINA

ENTER THE DIVISION / AGENCY TITLE

And

VENDOR'S LEGAL NAME

WHEREAS, this AGREEMENT is entered into by and between an agency of the State of North Carolina, AGENCY (hereinafter called the "State") and VENDOR (hereinafter called the "Vendor"), under the terms and conditions herein as of the date of award (the "Effective Date"), below and is the result of Invitation for bid [IFB DATE, REFERENCE NUMBER.] and any further addenda or negotiation between the parties.

WHEREAS, this AGREEMENT is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.

WHEREAS, all mutually agreed attachments are incorporated herein.

NOW, THERFORE, for and in consideration of the mutual agreement, hereinafter set forth, the Parties do mutually agree as follows:

I. PURPOSE AND BACKGROUND

II. CONTRACT TERM

The Contract shall have an initial term of [written number (x)] years, beginning on the date of contract award (the “Effective Date”).

- A. RENEWAL OPTIONS: At the end of the Contract’s current term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of ___ additional one-year terms. The State will give the Vendor written notice of its intent whether to exercise each option no later than [written number (x)] days before the end of the Contract’s then-current term. In addition, the State reserves the right to extend a contract term for a period of up to 180 days in 90-day-or-less increments.
- B. CONTRACT MODIFICATIONS: Contract changes, if any, over the life of the contract shall be implemented by contract amendments duly executed by the State and the Vendor.
- C. TRANSITION ASSISTANCE: If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, Vendor shall provide, at the option of the State, up to ____ [insert number] months after such end date all such reasonable transition assistance requested by the State, 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. If the State exercises this option, the Parties agree that such transition assistance shall be deemed to be governed by the terms and conditions of this Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for performance of the services or other resources utilized.

V. PRICING

Contract price shall constitute the total cost to the State for delivery fully assembled and ready for use, including all applicable charges for shipping, delivery, handling, administrative and other similar fees. Vendor shall not invoice for any amounts not specifically allowed for in accordance with the Pricing Form (attached)

VI. ORDERING

- A. When an order is placed using a purchase order, the purchase order number shall be shown on all packages and shipping manifests to ensure proper identification and payment of invoices. If an order is placed without using a purchase order, such as via phone, the Buyer's name shall be show on all packages. A complete packing list shall accompany each shipment. Vendors shall not ship any products until they have received a valid order.
- B. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

VI. DELIVERY AND INSTALLATION

- A. The Vendor shall deliver Free-On-Board (FOB) Destination to the following location(s):

- B. Vendor shall complete delivery within _____ consecutive calendar days after receipt of purchase order.
- C. For orders that include installation, delivery shall not be considered to have occurred until installation has been completed. Upon completion of the installation, the Vendor shall remove and properly dispose of all waste and debris from the installation site. The Vendor shall be responsible for leaving the installation area clean and ready to use.
- D. All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

VII. INVOICES AND PAYMENT TERMS

- A. It is the responsibility of the receiving agency to inspect all materials, supplies and equipment upon delivery to ensure compliance with the contract requirements and specifications. Invoices may not be paid by the using agency until an inspection has occurred and the goods accepted.
- B. Vendor shall invoice the Ordering Entity. The standard format for invoicing shall be Single Invoices meaning that the Vendor shall provide the Buyer with an invoice for each order. Invoices shall include detailed line item information to allow Buyer to verify pricing at point of receipt matches the correct price from the original date of order. At a minimum, the following fields shall be included on all invoices:

Vendor's Billing Address, Customer Account Number, NC Contract Number, Order Date, Buyer's Order Number, Manufacturer Part Numbers, Vendor Part Numbers, Item Descriptions, Price, Quantity, and Unit of Measure.

- C. Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.

VIII. WARRANTY

- A. Vendor warrants that all equipment furnished under this Agreement will be newly manufactured, of good material and workmanship. The warranty will be for a minimum period of twelve (12) months from date equipment is put into operation or the length of the manufacturer's warranty, whichever is longer. Such warranty shall cover the cost of all defective parts replacement, labor, freight, and technicians' travel at no additional cost to the State. To the extent not superseded by the terms of this paragraph, manufacturer's warranty terms shall apply.
- B. The report of a problem does not presuppose that every call must result in an "on-site" visit for service/repair. The Vendor and/or service sub-contractor shall utilize best efforts to resolve problems in a timely fashion by using acceptable servicing methods to include, but not limited to, verbal problem analysis and remote diagnosis. The warranty requirement does not impose any additional duty on the State to make other than normal and good faith problem resolution efforts or expenditures of time.

- Vendor **is/is not** authorized by manufacturer to repair equipment offered during the warranty period.
 - Vendor **will/will not** provide warranty service during the warranty period.
- C. Contact information for Warranty Service provider, including any third-party service providers, shall be provided to the Contract Lead. Vendor shall be responsible for compliance with warranty terms by any third-party service provider. The Vendor shall ensure the Contract Lead has the most up-to-date contact information for Warranty Service providers.

XIX. MAINTENANCE

Following expiration of the above warranty, Vendor, or third-party service provider, shall maintain the specifications and performance level in accordance with the manufacturer's published specifications. It shall include all parts, all remedial maintenance labor, all travel and living expenses incurred. Coverage shall be for 8:00 am to 5:00 pm, Monday through Friday, except State recognized holidays and shall include a minimum of two (2) preventive and safety maintenance inspections per year. The State accepts the maintenance coverage in this paragraph at the price offered on the PRICING form (attached).

X. PRODUCT RECALL

Vendor expressly assumes full responsibility for prompt notification to the Contract Lead of any product recall in accordance with the applicable state or federal regulations. The Vendor shall support the State, as necessary, to promptly replace any such products, at no cost to the State.

XI. PERSONNEL

- A. Vendor warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services shall possess the skill and competence consistent with the prevailing business standards in the industry. Vendor agrees that it shall not enter any agreement with a third party that may abridge any rights of the State under this Contract.
- B. Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Contract Lead. Vendor shall notify the Contract Lead of any desired substitution, including the name(s) and references of Vendor's recommended substitute personnel. The State will approve or disapprove the requested substitution in a timely manner. The State may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination,

the State may request acceptable substitute personnel or terminate the contract services provided by such personnel.

- C. In accordance with NC General Statute 143-59.4, the Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of The Contract. Vendor shall provide notice, in writing to the State, of the relocation of the Vendor, employees of the Vendor, sub-Contractors of the Vendor, or other persons performing services under the Contract to a location outside of the United States.

XII. SUBCONTRACTING

- A. Performance under The Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead.
- B. Vendor shall serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. 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. Vendor shall retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

XIII. GENERAL

- A. If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.
- B. The State reserves the right to inspect, at a reasonable time, the equipment, item, plant or other facilities of a Vendor during the Contract term as necessary for the State's determination that such equipment, item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective

performance of the Contract.

XIV. REMEDIES

- A. LIQUIDATED DAMAGES: The parties agree that calculation of actual damages resulting from failure to meet the following performance standards is extremely difficult, if not impossible, to calculate accurately, and the parties also agree that the compensation identified for such failures are a reasonable estimate of damages resulting from a failure to meet the performance standard described. Therefore, the parties agree that the Vendor shall be subject to amounts due as liquidated damages but not as a penalty, for each such failure, as follows:

[List each item subject to liquidated damages and the amount, or method of determining the amount, of liquidated damages for each.]

Notwithstanding any other provision herein, liquidated damages shall not be subject to a limitation on damages or limit of liability for damages that otherwise may be applicable to recoverable damages.

- B. 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 State's Contract Lead for resolution. A claim by the State shall be submitted in writing to the Vendor's Project Manager for resolution. 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 The 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 The Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

XV. CERTIFICATION AND SAFETY LABELS

All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas

Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution

XVI. NORTH CAROLINA GENERAL TERMS AND CONDITIONS

Your agreement to the NC eProcurement Terms of Use included acceptance of the North Carolina General Terms and Conditions

(https://files.nc.gov/ncdoa/pandc/Legal/NC_General_TandC_v1_3.2019.pdf).

D. CERTIFICATIONS: Vendor certifies to each of the following by initialing the line before the statement:

_____ that its quote for goods or services offered, accepted, and included in this contract was submitted competitively and without collusion, as required by G.S. 143-54;

_____ that it is in sound financial condition; has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service and any other government entity; is current on all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings; is not the subject of any current litigation or findings of noncompliance under federal or state law; has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of The Contract.

_____ that to the best of Vendor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

_____ that none of its officers, directors or controlling owners has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2);

_____ that no employee or agent of Vendor has offered, and no State employee has accepted, any gift or gratuity in connection this contract, in violation of N.C.G.S. § 133-32;

_____ that it, and each of its sub-contractors under this contract, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system, as required by G.S. §143-48.5; and

_____ that the Vendor is not an ineligible vendor due to being identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran, in accordance with the Iran Divestment Act of 2015, G.S. 147-86.55 et seq. The Treasurer's Divestment List may be reviewed at:

<https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-ActResources.asp>.

E. ACCEPTANCE AND AUTHORIZATION

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officials thereunto duly authorized as of the dates below indicated:

EXECUTED by the STATE this ____ day of _____, 2020

NORTH CAROLINA DEPARTMENT OF _____

SEAL:

[Agency's Authorized Representation]

Full name

Title

Signature

Date

EXECUTED by the Vendor this ____ day of _____, 2020.

Affix Corporate Seal

By: _____

[Vendor's Authorized Name]

Full name

ATTACHMENTS

- A. Solicitation Document
- B. **Vendor's Response, including** Vendor's PRICING Proposal
- C. Additional Response Attachments
- D. Certification for Contracts, Grants, Loans, and Cooperative Agreements