State of North Carolina
Office of Information Technology Services

Beverly Eaves Perdue
Governor

Gerald L. Fralick
State Chief Information Officer

Memorandum

To: Jennifer Jackson, Purchasing Agent
Crime Control and Public Safety

From: Sherwood Creech, Contract Specialist
Statewide IT Procurement Office

Subject: Approval to Renew Contract
ITS-004483 (ITS-005978) Microwave Antenna, 2nd of 2 renewals

Date: **September 1, 2011**

The Statewide IT Procurement Office has approved your request to renew the Microwave Antenna contract with Hutton Communications. Statewide IT also approves the 5.2% price increase requested by the Hutton. The term of the contract will be for a period of one (1) year ending on August 28, 2012. There are no renewal options remaining on this contract.

This agreement shall not be amended or extended without prior written approval from this office.

If you have any questions or require further information, please contact me at (919) 754-6668 or at Sherwood.creech@nc.gov

Thank you.

P.O. Box 17209 • Raleigh, North Carolina 27619-7209
Tel: 919.754.6100 • State Courier 51-01-11
An Equal Opportunity/Affirmative Action Employer

HUTTON®
...your wireless product experts

August 25, 2011

Hutton Communications, Inc. would like to extend contract # ITS-004483 for another year. However, due to the very high costs of copper, aluminum and petroleum products the cost of all goods and transportation cost have risen substantially. Because of that we have no choice but to past along a very modest increase of 5% of the materials sold to you. We absorbed it through two years of the contract but we cannot absorb it without a small increase for the next twelve months.

Hutton would like to offer the following unit prices.

Item 1	PL6-65-PXA/G	$2,343.16
Item 2	PL8-65-PXA	$3,261.40
Item 3	PARX8-59W-PXA	$4,165.00
Item 4	PARX10-59W-P7A	$5,482.00
Item 5	PXL6-65-PXA/E	$3,222.60
Item 6	PX8-65-PXA	$3,932.11
Item 7	PL8-59-PXA	$3,261.38
Item 8	HP10-59-P3A	$7,970.22
Item 9	PAR8-65-PXA	$3,429.65
Item 10	PAR6-65-PXA/B	$2,382.90
Item 11	PL8-107-PXA	$3,261.40
Item 12	PL6-107-PXA/F	$2,343.16
Item 13	HP10-59-P3A	$7,970.22
Item 14	ATTACH-WG3	$24.85
Item 15	EW63	$12.47
Item 16	163SE	$164.95
Item 17	F137CCS2	$246.74
Item 18	55001-137	$43.16
Item 19	MT050B-81315	$2,054.11
Item 20	6600D-6	$234.66
Item 21	6600D-4	$168.54
Item 22	6600D-2	$119.92
Item 23	EWP90-107	$11.85
Item 24	190SE	$167.44
Item 25	F090CCB2	$281.10
Item 26	AE01D-D1658-100	$124.92
Item 27	520570-2	$204.22
Item 28	520570-3	$293.69
	520570-3	$193.70 when purchased with an antenna.

If you have any questions, please let me know.

Sue Hendrick

Sue

Gov't. Account Coordinator
(866)513-5413

Hutton Communications, Inc.
4046 Mound Road • Joliet, IL 60436 • 815-744-6444 • Fax 815-744-6066 • www.huttononline.com
Toll-Free Sales 877-832-6337

State of North Carolina
Office of Information Technology Services

Beverly Eaves Perdue
Governor

Gerald L. Fralick
State Chief Information Officer

Memorandum

To: Jennifer Jackson, Purchasing Agent
Crime Control and Public Safety

From: Sherwood Creech, Contract Specialist
Statewide IT Procurement Office

Subject: Approval to Renew Contract
ITS-004483 Microwave Antenna, 1st of 2 renewals

Date: **August 17, 2010**

The Statewide IT Procurement Office has approved your request to renew the Microwave Antenna contract with Hutton Communications. The term of the contract will be for a period of one (1) year ending on August 28, 2011. There is one renewal option remaining on this contract.

This agreement shall not be amended or extended without prior written approval from this office.

If you have any questions or require further information, please contact me at (919) 754-6668 or at Sherwood.creech@nc.gov

Thank you.

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State of North Carolina
Office of Information Technology Services
Statewide IT Procurement Office

Beverly Eaves Perdue, Governor **Gerald L. Fralick, State Chief Information Officer**

Memorandum

To: Sue Hendrick, Gov't Account Coordinator
Hutton Communications, Inc.

From: Sherwood Creech, Contract Specialist
Statewide IT Procurement

Subject: **ITS-004483 Microwave Antenna Contract for NC Highway Patrol**
Renewal Request

Date: **August 17, 2010**

Statewide IT Procurement wishes to renew ITS-004483 per renewal options noted in the IFB. This will be the first renewal option effective through August 28, 2011.

If you wish to continue this contract please execute this memorandum and return for processing by **Friday, August 20, 2010.** You may fax this form back to me at the number listed below.

If you have questions you may contact me at 919-754-6668 or fax: (919) 715-8549 or e-mail: Sherwood.creech@nc.gov

Authorized Signature

8/17/10
Date

Sue Hendrick
Print Name

Gov't Acct. Coordinator
Title

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Tel: 919.754.6100 • State Courier 51-01-11
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Office of Information Technology Services

CERTIFICATION OF AWARD

THIS IS NOT A PURCHASE ORDER

BID/FILE NUMBER: ITS-004483

THIS BID NUMBER MUST BE SHOWN ON YOUR PURCHASE ORDER

TO: Angela Wainwright, Purchasing
Crime Control and Public Safety

DATE: August 28, 2009
REQUISITION NO: PR8993120
DELIVERY: FOB Destination

In accordance with the requirements of General Statutes 147-33.95, we certify contract on the items listed below to be ordered by you. Issue order immediately and directly to the vendor listed, giving complete shipping instructions. Order only the item(s) listed and the quantity(ies) as shown in the ITS contract document. Price(s) includes delivery to destination. Read the contract in its entirety including the attached Terms and Conditions to be aware of any action necessary on your part.

Commodity: 725-12 Microwave Antennas and Accessories in accordance with IFB ITS-004483.

This will be an agency specific convenience contract. The term is one (1) year, with two (2) one year renewal options.

The State cannot, does not, and will not guarantee purchase quantities to be made under this contract.

TOTAL: **$56,301.45**

VENDOR: Hutton Communications, Inc.
4046 Mound Road
Joliet, IL 60436

Contract Specialist
Statewide IT Procurement Office

cc: Sue Hendrick, Hutton Communications

INSTRUCTIONS TO VENDORS:

1. THIS IS NOT A PURCHASE ORDER. Do not make shipment until you have received an official order from the using agency.
2. Invoices should be made out to the using agency and forwarded directly to them for payment
3. The exact items certified and ordered must be shipped. No substitutions shall be made without prior approval of the Office of Information Technology Services.
4. Applicable North Carolina sales and use tax shall be added to invoices as a separate item.
5. Please note the contract award description above: the contract awarded to you may be a portion of the contract rather than the complete contract.

Original

STATE OF NORTH CAROLINA Office of Information Technology Services Statewide IT Procurement Office	INVITATION FOR BIDS NO. ITS-004483 Bids will be publicly opened: August 11, 2009 @ 2:00 pm Contract Type: (Agency Specific)
Refer ALL Inquiries to: Sherwood Creech E-Mail: Sherwood.creech@its.nc.gov	Issue Date: July 28, 2009 Commodity Number: 725-12 Commodity: Microwave Antennas and Accessories
Telephone No.: (919) 754-6668	Using Agency Name: Crime Control and Public Safety – Division of State Highway Patrol
(See page 2 for mailing instructions.)	Agency Requisition No. PR8993120

NOTICE TO VENDORS

Sealed bids, subject to the conditions made a part hereof, will be received at this office 333 E. Six Forks Road, Raleigh, NC until 2:00 pm Eastern Time on the day of opening and then opened, for furnishing and delivering the goods and/or services as described herein. Refer to page 2 for proper mailing instructions.
Bids submitted via facsimile (FAX) machine in response to this Invitation for Bids will not be accepted. Bids are **subject to rejection unless submitted on this form.**

EXECUTION

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

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

VENDOR: Hutton Comms., Inc.	*E-MAIL:* hendricks@huttoncom.com	
STREET ADDRESS: 4046 Mound Rd.	*P.O. BOX:*	*ZIP:*
CITY & STATE & ZIP: Joliet, IL 60436	*TELEPHONE NUMBER:* (815)744-4448	*TOLL FREE TEL. NO* (866)513-5413
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING: Sue Hendrick, Gov't. Acct. Coordinator	*FAX NUMBER:* (815)744-6066	
AUTHORIZED SIGNATURE: Sue Hendrick	*DATE:* Aug. 10, 09	

Offer valid for 30 days from date of bid opening unless otherwise stated here: ____ days (See Instructions to Vendors, Item 5). Prompt Payment Discount: 0 % N30 days (See Instructions to Vendors, Item 6).

ACCEPTANCE OF BID

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

FOR STATE IT PROCUREMENT USE ONLY

Offer accepted and contract awarded this 28 day of August, 2009, as indicated on attached certification,

by Sherwood Creech (Authorized representative of ITS).

VENDOR: Hutton Comms., Inc.

DELIVERY INSTRUCTIONS: Deliver one (1) **signed original** executed bid response, one (1) **copy** of the executed bid response. Address envelope and insert bid number as shown below. It is the responsibility of the Vendor to have the bid in this office by the specified time and date of opening. Vendor must also submit one (1) **electronic copy** of its proposal on read-only CD/DVD(s). The files on the discs should not be password-protected and should be capable of being copied to other media.

DELIVER TO:
BID NUMBER: ITS-004483
Statewide IT Procurement Office
Attn: Sherwood Creech, Contract Specialist
333 E. Six Forks Road, 3rd Floor
Raleigh, NC 27609

ADDENDUM TO IFB: 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 IFB. Vendors' questions posed orally at any pre-bid conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer.
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 objects to and will not be required to evaluate or consider any additional terms and conditions submitted with a Bidder's response. This applies to any language appearing in or attached to the document as part of the Bidder's response. By execution and delivery of this Invitation for Bids and response(s), the Bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

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.

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

VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: Vendor Link NC allows Vendor to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration is available at http://www.ips.state.nc.us.

VENDOR: Hutton Comms., Inc.

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 VENDOR: Hutton Comms., Inc.

SECTION 1: IFB SCHEDULE

Bid Questions

Due Date: August 3, 2009
Time: 2:00 p.m. Eastern Time
Address: 333 E. Six Forks Road, 3rd Floor, Raleigh, NC 27609
Instructions: Written questions will be received at Sherwood.creech@its.nc.gov until date and time specified above. Please enter "**Questions ITS-004483**" as the subject for the email. The State will prepare responses to all written questions submitted, and post an addendum to the Interactive Purchasing System (IPS) http://www.ips.state.nc.us/ips/pubmain.asp. Oral answers are not binding on the State.

Vendor contact regarding this IFB with anyone other than the Contract Specialist may be grounds for rejection of said Vendor's offer. Agency contact regarding this IFB with any Vendor may be grounds for cancellation of this IFB.

Bid Submittal

Due Date: August 11, 2009
Time: 2:00 p.m. Eastern Time
Mail Address: See page 2
Instructions: All bids must be sealed and are subject to the conditions of this IFB. Indicate firm name and IFB number on the front of the sealed envelope or package.
Include **one (1) original** executed bid and **one (1) copy** of the executed bid response. Vendor must also submit one (1) **electronic copy** of its proposal on read-only CD/DVD(s). The files on the discs should not be password-protected and should be capable of being copied to other media.
Each original bid must be signed and dated in ink, by an official authorized to bind the company. The Vendor, by making an offer, expressly represents that the specifications herein have been read and understood, and that the offer complies with all aspects. Any change that is received after the bid opening, and that is not specifically solicited by the State, shall be rejected.

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

SECTION 2: INTENT, USE, DURATION AND SCOPE

The purpose of this Invitation for Bids (IFB) is to obtain pricing for and select a Vendor to provide Microwave Antennas and Accessories for the Department Crime Control and Public Safety – Division of Highway Patrol. This is an indefinite quantity, agency specific contract. The contract period shall be for one (1) year with the option to extend for two (2) additional one (1) year periods. Bidding will be in accordance with the terms and conditions of this IFB and any addenda thereto. **Bidders are cautioned that the State cannot, does not, and will not guarantee purchase quantities to be made under this contract.** The estimated value of this contract is approximately $75,000.00 annually.

SECTION 3: VENDOR OFFER

Bid must be submitted on the forms provided herein. Bids submitted in any other format may be subject to rejection. If additional sheets are required (for example, Vendors who are offering alternate proposals); the Vendor should submit a separate bid document. Any **alternate proposals** must be clearly marked as such with the phrase "alternate bid for 'name of' Vendor" and numbered sequentially with the first bid. This legend must be in bold type of not less than 14 point type on the face of the bid, and on the text of the alternative proposal.

Reseller Information - The Agency acknowledges that the Reseller has merely purchased the Third Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than the Reseller ("Third Parties"). The Agency further acknowledges that except for the payment to the Reseller for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third Party Items which are provided to the Reseller. The Reseller shall assign all applicable third party warranties for Deliverables to the Agency.

Vendor Utilization of Workers Outside the U.S.: In accordance with NC General Statute 147-33.97, the Vendors 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:

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

Will any work under this contract be performed outside the United States? *Where will services be performed:* _____	*YES*_____ *NO*_____

SECTION 4: E-PROCUREMENT

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

a) General information on the e-procurement service can be found at http://eprocurement.nc.gov/
b) Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service.
c) As of the IFB 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 IFB.

SECTION 5: DELIVERY

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

Delivery will be made from McAllen, TX or Joliet, IL (city, state) within 30-45 consecutive calendar days after receipt of purchase order.

SECTION 6: WARRANTY

The Vendor warrants that all equipment furnished under this IFB will be new, of good material and workmanship. The warranty will be the manufacture's standard warranty for these goods from date equipment is put into operation. Such replacement shall include all parts, labor, and transportation cost to the location where equipment is down, free of any charge to the owner or his representative.

VENDOR: Hutton Comms., Inc.

The report of a problem does not presuppose that every call must result in an "on-site" visit for service/repair. The Vendor and/or service sub-contractor shall utilize best efforts to resolve problems in a timely fashion through the use of acceptable servicing methods to include, but not limited to, verbal problem analysis and remote diagnosis. The warranty requirement does not impose any additional duty on the State to make other than normal and good faith problem resolution efforts or expenditures of time.

(Check Yes or No)

A.	Bidder is manufacturer authorized to repair equipment offered during the warranty period?	Yes		No	
B.	Will bidder perform Warranty Service? *	Yes		No	

* Hutton will replace defective product OR help w/ RMA process

If Yes to B, complete this section:

Contact Person	Sue Hendrick		
Telephone Number	(815) 744-4448	Toll-free Number	(866) 513-5413
Address of Service Facility	4046 Mound Rd. Joliet, IL 60436		

If No to B, complete this section: (who will perform the Warranty)

Company Name				Contact Person			
Address		City		State		Zip	
Telephone Number		Toll-free Number					

SECTION 7: PRODUCT RECALL

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

SECTION 8: BID AWARD

It is the general intent to award this contract to one Vendor. As provided by statute, award will be based on Best Value Analysis, (Lowest Price Technically Acceptable Source Selection Method in accordance with 09 NCAC 06B. 0302 Information Technology Procurement.) See ITS Instructions to Vendors, Item #11.

The State, at its sole discretion, reserves the right to reject any offers that does not meet specifications.

SECTION 9: POSSESSION AND REVIEW

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

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

 VENDOR: Hutton Comms., Inc.

SECTION 10: BRAND SPECIFIC: (LINE ITEMS 1 – 13 only)

Manufacturer's name and product description used in this solicitation are brand/product specific. The items offered in response to this solicitation must be the manufacturer and type specified. These products are currently owned and operated by the state and are required for compatibility and continuity of support. **No substitutions will be accepted.**

SECTION 11: MAKE AND MODEL: (LINE ITEMS 14 – 29)

Manufacturer's name and model/catalog numbers used are for the purpose of identification and to establish general quality level desired. Such references are not intended to be restrictive and comparable products of other manufacturers will be considered. However, bidders are cautioned that any deviation from specifications must be pointed out in their bid.

SECTION 12: DESCRIPTIVE LITERATURE:

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

SECTION 13: FURNISH AND DELIVER:

Freight, handling, hazardous material charges, and distribution charges shall be included in the total price of each item.

ITEM	QTY	UOM	DESCRIPTION	UNIT COST	TOTAL EXTENDED COST
1.	1	Each	Andrew #PL6-65-PXA Single Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and ONE Sway Bar. **No Substitutions will be accepted.** (1) 520570-3	$2,226.00 $184.00	$2,226.00 $184.00
2.	1	Each	Andrew PL8-65-PXA Single Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and TWO Sway Bars. **No Substitutions will be accepted.** (1) 520570-3	$3,098.32 $184.00	$3,098.32 $184.00
3.	1	Each	Andrew PARX8-59W-PXA Dual Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and TWO Sway Bars. **No Substitutions will be accepted.** (1) 520570-3	$3,956.75 $184.00	$3,956.75 $184.00
4.	1	Each	Andrew PARX10-59W-PXA Dual Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and TWO Sway Bars. PARX10-59W-P7A & R10G **No Substitutions will be accepted** (1) 520570-3	$5,207.89 $184.00	$5,207.89 $184.00
5.	1	Each	Andrew PX6-65-PXA Dual Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and ONE Sway Bar. New P/N PXL6-65-PXA/E **No Substitutions will be accepted** (1) 520570-3	$3,061.44 $184.00	$3061.44 $184.00

Some antennas come w/ (1) sway bar. Where (2) sway bars are needed it may be necessary to purchase an additional sway bar.... P/N 520570-3. or VStrut-P3KIT

BID No.: ITS-004483

VENDOR: Hutton Comms., Inc.

ITEM	QTY	UOM	DESCRIPTION	UNIT COST	TOTAL EXTENDED COST
6.	1	Each	Andrew PX8-65-PXA Dual Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and TWO Sway Bars. **No Substitutions will be accepted** (1) 520570-3	$3735.50 $184.00	$3735.50 $184.00
7.	1	Each	Andrew PL8-59-PXA Single Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and TWO Sway Bars. **No Substitutions will be accepted** (1) 520570-3	$3,098.31 $184.00	$3,098.31 $184.00
8.	1	Each	Andrew HP10-59-P3A Single Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and TWO Sway Bars. **No Substitutions will be accepted**	$7,571.70	$7,571.70
9.	1	Each	Andrew PAR8-65-PXA Single Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and TWO Sway Bars. **No Substitutions will be accepted** (1) 520570-3	$3,258.16 $184.00	$3,258.16 $184.00
10.	1	Each	Andrew PAR6-65-PXA Single Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and ONE Sway Bar. **No Substitutions will be accepted** (1) 520570-3	$2,263.75 $184.00	$2,263.75 $184.00
11.	1	Each	Andrew PL8-107-PXA Single Pole with CPR90G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and TWO Sway Bars. **No Substitutions will be accepted** (1) 520570-3	$3,098.32 $184.00	$3,098.32 $184.00
12.	1	Each	Andrew PL6-107-PXA Single Pole with CPR90G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe and ONE Sway Bar. new P/N PL6-107-PXA/F **No Substitutions will be accepted** (1) VSTruT-P3Kit	$2,226.00 $142.70	$2,226.00 $142.70
13.	1	Each	Andrew HP10-59-P3A Single Pole with CPR137G input flange. Antenna to include RADOME and hardware to mount 4.5 inch pipe. **No Substitutions will be accepted**	$7,571.70	$7,571.70
14.	1	Each	Installation Fee to install a connector on one of a wave guide reel. ATTACH-WG3	$23.60	$23.60

BID No.: ITS-004483

VENDOR: Hutton Comms., Inc.

ITEM	QTY	UOM	DESCRIPTION	UNIT COST	TOTAL
15.	1	Foot	Andrew EW63 series Standard Waveguide **or equivalent.** Make: Andrew Model: EW63	$11.84	$11.84
16.	1	Each	Non-Tunable Waveguide connectors with CPR137G flange that will install on all the EW63 waveguides listed above. Frequency Range 5.925 to 6.452 ghz **or equivalent. These connectors must be of the same manufacturer as the waveguide in Item 8.** Make: Andrew Model: 163SE	$156.70	$156.70
17.	1	Each	24 inch Flex Section with CPR137G flange on each end. Frequency Range is 5.925 – 6.425 ghz **or equivalent.** Make: Andrew Model: F137CCS2	$234.40	$234.40
18.	1	Each	Pressure Window for CPR137G flange **or equivalent.** Make: Andrew Model: 55001-137	$41.00	$41.00
19.	1	Each	Andrew Model MT050 Series dehydrator for antenna systems with 1 to 20 cubic feet volume. 115VAC and low pressure alarm. Must include 25 ft. of 3/8 inch polyethylene tubing, shut off valve and 1/8 NPT to 3/8 polyethylene connector **or equivalent.** Make: Andrew Model: MT050B-81315	$1,951.40	$1,951.40
20.	1	Each	Andrew type 6600D-6 Distribution Manifolds **or equivalent,** 6-Port with cut off and pressure gauge on each port. Make: Andrew Model: 6600D-6	$222.92	$222.92
21.	1	Each	Andrew type 6600D-4 Distribution Manifolds **or equivalent,** 4-port with cut off and pressure gauge on each port. Make: Andrew Model: 6600D-4	$160.11	$160.11

BID No.: ITS-004483

VENDOR: Hutton Comms., Inc.

ITEM	QTY	UOM	DESCRIPTION	UNIT COST	TOTAL EXTENDED COST
22.	1	Each	Andrew type 6600D-2 Distribution Manifolds **or equivalent**, 2-port with cut off and pressure gauge on each port. Make: Andrew Model: 6600D-2	$113.92	$113.92
23.	1	Foot	Andrew, EW90-107 Series Waveguide **or equivalent**. Make: Andrew Model: EWP90-107	$11.25	$11.25
24.	1	Each	Non-Tunable Waveguide connectors with CPR90G flange that will install on all EW90 waveguides listed above. Frequency Range 10.07 to 11.7 ghz **or equivalent. These connectors must be of the same manufacturer as the waveguide in Item 23.** Make: Andrew Model: 190SE	$159.06	$159.06
25.	1	Each	24 inch Flex Section with CPR90G flange on each end. Frequency Range is 10.7 – 11.7 ghz **or equivalent.** Make: Andrew Model: F090CCB2	$267.04	$267.04
26.	1	Each	Shelf Andrew P/N: AE01D-D1658-001 for Andrew Model MT050 series dehydrator **or equivalent.** Make: Andrew Model: AE01D-D1658-100	$118.67	$118.67
27.	1	Each	Inboard Side Strut Kit for 6 ft. microwave antennas, P/N 5207570-2 **or equivalent.** Make: Andrew Model: 520570-2	$194.00	$194.00
28.	1	Each	Outboard Side Strut Kit for 8 ft, 10 ft. and 12 ft. microwave antennas, P/N 520570-3 **or equivalent.** Make: Andrew Model: 520570-3	$279.00	$279.00
			TOTAL COST		$56,301.45

 VENDOR: Hutton Comms., Inc.

Energy Star

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

Do the products offered meet **Energy Star** specifications for energy efficiency?	**Yes**		(**No**)	

Sustainability

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

Does the packaging of the item(s) offered in response to this solicitation contain recycled content? (Yes) No

If yes, what is the recycled content? 85% Antenna package ~~100%~~ waveguide % Can this packaging be recycled? (Yes) No

Do the item(s) offered have any recycled content? Yes (No)

If yes, what is the recycled content? _____%

How can the items be disposed of or can it be recycled at the end of use?

_____

_____

Historically Underutilized Businesses

"Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled." http://www.doa.nc.gov/hub/

Pursuant to General Statute 143-48, 143-128.4 and Executive Order #13, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this Invitation for Bids.

Are you a Historically Underutilized Business (i.e., minority, woman or disabled-owned business)?

_____Yes ✓ No

If applicable, specify classification. _____

SECTION 14: ITS INSTRUCTIONS TO VENDORS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **DEFINITIONS**:
   - **THE STATE:** Is the state of North Carolina and its agencies.
   - **ITS:** Office of Information Technology Services
   - **OFFEROR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
   - **TERM CONTRACT:** a contract in which a source of supply is established for a specified period of time for specified services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
   - **TECHNICAL SERVICES CONTRACT:** A contract to provide for information technology specialty services for specific projects or assignments.
   - **ITS CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or services. These contracts are in place for the convenience of the state and use of them is optional.
   - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
3. **NOTICE TO VENDORS:** All bids are subject to the provisions of the Instructions to Vendors, special terms and conditions specific to this Invitation for Bids, the specifications, and the ITS Terms and Conditions. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** *The State objects to and will not evaluate or consider any additional terms and conditions submitted with a Vendor response.* This applies to any language appearing in or attached to the document as part of the Vendor's response. Bids with terms and conditions attached will be subject to rejection.
4. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) ITS Terms and Conditions, and (4) Instructions to Vendors.
5. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer shall be valid for 30 days from the date of bid opening.
6. **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.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each Vendor must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. **Only information that is received in response to this IFB will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.
8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items, which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the purchasers in the Office of Information Technology Services those products or packaging they offer which have recycled content and that are recyclable.

9. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from ITS. The Vendor is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.

10. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

11. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item bid. In addition, on agency specific or term contracts, ITS reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by ITS to be pertinent or peculiar to the purchase in question.

12. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the Vendor's expense. Written request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become the property of the State. Each individual sample must be labeled with the Vendor's name, bid number, and item number. A sample, on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.

13. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation, that is over $25,000, they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within 15 calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bid status and Award notices are posted on the Internet at http://www.ips.state.nc.us. **All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1102 - .1121.**

14. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.

SECTION 15: 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 the Chief Information Officer's (CIO) policy or regulation, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

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

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

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

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.

a) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.

b) This Contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:

i) Such use does not conflict with the terms, specifications or any amendments to this Contract , or

ii) Such use does not conflict with any procurement law, regulation or policy, or

iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

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).

a) Intellectual Property. Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) Inherent Services. If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables

c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction

d) Warranty as to Equipment; Hardware. Vendor warrants that the equipment and hardware that it provides pursuant to this Contract shall be free from defects in materials, in good working order and be maintained in good working order.

6) **Software License:** *Reserved*

7) **Maintenance/Support Services:** *Reserved*

8) **Travel Expenses:** Vendor may be reimbursed for travel expenses arising under the performance of this Contract at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing services under this Contract.

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 Vendor(s) as permitted by 9 NCAC 06B.1102 (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:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as

permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or

b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however

c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

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

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

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.0103, 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 license, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

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 patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

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

ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.

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

e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

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

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 if 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 of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 40) herein below.

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 times the 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, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.

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

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

a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:

i) Cancel the Stop Work Order, or

ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.

b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and

ii) The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

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

a) Notification: Vendor must provide written notification of any proposed pricing change to the Office of Information Technology Services not less than sixty -(60) days prior to the desired effective date of any proposed price adjustment. If Vendor is a reseller, MCL, VAR, or other party having a similar relationship with the manufacturer, the notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the price change is general in nature.

b) Decreases: The State shall receive full proportionate benefit of any decrease immediately upon the effective date at any time during the Contract period.

c) Increases: All prices and costs shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with the State reserving the right to accept or reject the increase, or cancel the Contract. The State shall exercise this right not later than 30 days after the receipt of a properly documented request for price increase. Any increases accepted shall become effective not earlier than 30 days after the expiration of the original 30 days reserved to evaluate the request for increase.

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

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

36) Independent Contractors: Vendor and its employees, officers and executives, 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.

37) Transportation: Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. **Freight, handling, hazardous material charges, and distribution 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.

38) Notices: Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.

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

40) Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 31) herein.

41) Taxes: The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

42) Governing Laws, Jurisdiction, and Venue:

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

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

43) Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

44) Compliance with Laws: The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

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

46) Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

47) Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

a) **The successful vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

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

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

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

48) Electronic Procurement: ***Reserved***