STATE OF NORTH CAROLINA

DEPARTMENT OF PUBLIC SAFETY

Request for Proposal #:

Dewatering Pump Rental

Date of Issue: May 10, 2016

Proposal Opening Date: May 26, 2016

At 2:00 PM ET

Direct all inquiries concerning this RFP to:

Kim Bruske

Purchasing Agent II

Email: Kim.Bruske@ncdps.gov

Phone: (919) 324-6280

STATE OF NORTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY

Refer *ALL* Inquiries regarding this RFP to: **Kim Bruske** **Kim.Bruske@ncdps.gov** **(919) 324-6280**	**Request for Proposal #** 19-013527-BKS
	Proposals will be publicly opened: May 26, 2016
	Contract Type: Open Market
	Commodity No. and Description: 981 – Pumps and Pump Accessory Rental or Lease
	Using Agency: NCDPS/ Emergency Management
	Requisition No.: RQ19533464

EXECUTION

In compliance with this Request for Proposals, and subject to all the conditions herein, the undersigned Vendor 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 proposal, the undersigned Vendor certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore by executing this proposal, the undersigned certifies to the best of Vendor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. §143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Failure to execute/sign proposal prior to submittal shall render proposal invalid and it WILL BE REJECTED. Late proposals cannot be accepted.

VENDOR: Xylem Dewatering Solutions Inc			
STREET ADDRESS: 300 Sigma Dr		P.O. BOX:	ZIP: 27529
CITY & STATE & ZIP: Garner, NC 27529		TELEPHONE NUMBER: 919-661-6061	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #10):			
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR: David Donahue Branch Manager		FAX NUMBER: 919-661-6062	
VENDOR'S AUTHORIZED SIGNATURE: David Donahue	**DATE:** 5-26-16	E-MAIL: ncbranch@xyelminc.com	

Offer valid for at least 60 days from date of proposal opening, unless otherwise stated here: _____ days. After this time, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this RFP.

ACCEPTANCE OF PROPOSAL

If any or all parts of this proposal are accepted by the State of North Carolina, an authorized representative of the Department of Public Safety shall affix his/her signature hereto and this document and all provisions of this Request For Proposal along with the Vendor proposal response and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

FOR STATE USE ONLY: Offer accepted and Contract awarded this 8th day of July, 20 16, as indicated on the attached certification, by Kim Bruske.

(Authorized Representative of the Department of Public Safety).

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1.0 PURPOSE AND BACKGROUND

In order to meet emergency requirements during disasters, the North Carolina Division of Emergency Management (NCEM) requests a three (3) year disaster contract be established for dewatering pumps, support equipment and technicians. The dewatering pumps, support equipment and technicians will be used during disasters for emergency dewatering and flood water drainage. In the case of fire emergencies this equipment can be used to fill water trucks and for pre-wet operations.

Quantities referenced in this document represent the best available estimates of the State's requirements. Each emergency is unique. Therefore, nothing in this document shall be construed to prevent the State, when necessary, from contracting additional pumps, support equipment and technicians from non-contracted sources, nor shall it be construed to require the State to purchase or rent beyond its actual requirements. It is estimated that the State may require as many as 30 pumps, with enough support equipment and technicians to operate.

This is a multi-vendor awarded contract to ensure the needs of the State are met.

The North Carolina Division of Emergency Management (NCEM) has the authority and responsibility to provide cooperation and coordination activities related to natural and man-made emergencies and disasters (NCGS § 166A-2(4)). From time to time, NCEM may be required to rent dewatering and/or trash pumps of various sizes with associated hardware, and potentially operators to run the pumps to mitigate flooding or assist with firefighting activities. Each incident or event dictates the needs of the State, and no minimums are established by this RFP. NCEM retains the right to assign any needs to State Emergency Response Team agencies first, prior to using a contracted vendor. NCEM reserves the right to award contracts to responsive and responsible bidders who proposal is determined to be the most advantageous to the State. NCEM further reserves the right to award emergency purchase orders to vendors not on contract based upon the needs of the State and the availability of governmental and contracted resources at the time of need.

Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

2.0 GENERAL INFORMATION

In the event of an emergency, the State will begin ordering dewatering and trash pumps, support equipment and technician services by region from those contractors who are operational, have working communications, have available inventory and are closest to the actual locations where items are required. As local inventory is depleted, the State will move further away geographically and as far as necessary to satisfy its requirements. Bidders are reminded that every emergency will not necessarily result in a requirement of dewatering and trash pumps in every region. Pumps that are four (4) inches and above shall be portable mounted on a trailer or skid. Technical data to include fuel time, operating time per tank, and tank size should be submitted. All pumps shall have a functional equipment hour meter attached.

2.1 REQUEST FOR PROPOSAL DOCUMENT

The RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

2.2 NOTICE TO VENDORS REGARDING RFP TERMS AND CONDITIONS

It shall be the Vendor's responsibility to read the Instructions, the State's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP, and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with in the instructions in Section 2.6 PROPOSAL

QUESTIONS. If the State determines that any changes will be made as a result of the points raised, then such decisions will be communicated in the form of an RFP addendum. The State may also elect to leave open the possibility for later negotiation of specific components of the Contract that have been addressed during the question and answer period. Other than through this process, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's proposal. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject to further negotiation. **By execution and delivery of this RFP Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's proposal as nonresponsive.**

If a Vendor desires modification of the terms and conditions of this solicitation, it is urged and cautioned to inquire during the question period, in accordance with the instructions in this RFP, about whether a specific, proposed language modification is acceptable to or will be considered by the State. Identification of objections or exceptions to the State's terms and conditions in the proposal itself shall not be allowed and shall be disregarded or the proposal rejected. A Vendor may, however, attach a separate page to its proposal, titled "Request for Proposed Modifications to Terms and Conditions," and identify specific modifications that it requests the State to consider. The State will evaluate all proposals without regard to any proposed modifications. Once a proposal has been identified as the one for which an award recommendation has been made but prior to approval of the recommendation, the State, in its sole and absolute discretion, may consider any proposed modifications attached to that proposal. Any modification(s) to the terms and condition agreed to by the State will be identified in the Certification of Award. Any ambiguity, vagueness, inconsistency or conflict, either internal to such modification(s) or arising when read in conjunction with other portions of the Contract, shall be construed strictly in favor of the State. Only those proposed modifications identified in the award certification shall be part of the Contract, and the State may ignore all proposed modifications, accept one or more and ignore others, accept all or, through negotiations prior to certification of award, agree to compromise language concerning one or more proposed modifications. By executing and submitting its proposal in response to this RFP, Vendor understands and agrees that the State may exercise its discretion not to consider any and all proposed modifications Vendor(s) may request.

Contact with anyone working for or with the State regarding this RFP other than the State Contract Specialist named on the face page of this RFP in the manner specified by this RFP shall constitute grounds for rejection of said Vendor's offer, at the State's election.

2.3 RFP SCHEDULE

The table below shows the *intended* schedule for this RFP. The State will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	State	May 10, 2016
Submit Written Questions	Vendor	May 17, 2016 – 2:00pm
Provide Response to Questions	State	May 19, 2016 – 2:00pm
Submit Proposals	Vendor	May 26, 2016- 2:00pm
Contract Award	State	June 2, 2016 – 2:00 pm
Contract Effective Date	State	June 2, 2016 – 2:00pm

2.4 PROPOSAL QUESTIONS

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date.

Written questions shall be e-mailed to kim.bruske@ncdps.gov by the date and time specified above. Vendors should enter "RFP # *19-013527-BKS* Questions" as the subject for the email. Questions submittals should include a reference to the applicable RFP section and be submitted in a format shown below:

Reference	Vendor Question
RFP Section, Page Number	Vendor question…?

Questions received prior to the submission deadline date, the State's response, and any additional terms deemed necessary by the State will be posted in the form of an addendum to the Interactive Purchasing System (IPS), http://www.ips.state.nc.us, and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this RFP.

2.5 PROPOSAL SUBMITTAL

Sealed proposals, subject to the conditions made a part hereof and the receipt requirements described below, shall be received at the address indicated in the table below, for furnishing and delivering those items or services as described herein.

Mailing address for delivery of proposal via US Postal Service or delivery by any other method (special delivery, overnight, or any other carrier)
PROPOSAL NUMBER: 19-013527-BKS North Carolina Department of Public Safety Purchasing and Logistics Office 3030 Hammond Business Place Raleigh, NC 27603

IMPORTANT NOTE: All proposals shall be physically delivered to the office address listed above on or before the proposal deadline in order to be considered timely, regardless of the method of delivery. **This is an absolute requirement.** All risk of late arrival due to unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service is entirely on the Vendor. It is the sole responsibility of the Vendor to have the proposal physically in this Office by the specified time and date of opening. The time of delivery will be marked on each proposal when received, and any proposal received after the proposal submission deadline will be rejected. Sealed proposals, subject to the conditions made a part hereof, will be received at the address indicated in the table in this Section, for furnishing and delivering the commodity as described herein.

Note that the U.S. Postal Service generally does not deliver mail to specified street address but to the State's Mail Service Center. Vendors are cautioned that proposals sent via U.S. Mail, including Express Mail, may not be delivered by the Mail Service Center to the agency's purchasing office on the due date in time to meet the proposal deadline. All Vendors are urged to take the possibility of delay into account when submitting a proposal. **Attempts to submit a proposal via facsimile (FAX) machine, telephone or electronic means, including but not limited to e-mail, in response to this RFP shall NOT be accepted.**

a) Submit **two (2) signed, original executed** proposal responses , *[2]* of photocopies, *[1]* un-redacted electronic copies on CD, DVD or flash drive and, if required, *[1]* redacted electronic (Proprietary and Confidential Information Excluded) copies on CD, DVD or flash drive of your proposal simultaneously to the address identified in the table above.

b) Submit your proposal in a sealed package. Clearly mark each package with: (1) Vendor name; (2) the RFP number; and (3) the due date. Address the package(s) for delivery as shown in the table above. If Vendor is submitting more than one (1) proposal, each proposal shall be submitted in separate sealed envelopes and marked accordingly. For delivery purposes, separate sealed envelopes from a single Vendor may be included in the same outer package. Proposals are subject to rejection unless submitted with the information above included on the outside of the sealed proposal package.

c) The electronic copies of your proposal must be provided on separate read-only CD's, DVD's or flash drives. The files on the discs **shall NOT** be password protected, shall be in .PDF or .XLS format, and shall be capable of being copied to other media including readable in Microsoft Word and/or Microsoft Excel.

Disc One must contain the entire Technical Proposal including any proprietary information and have the following label affixed to the disc: 1) Vendor name; (2) the RFP number; (3) the due date; and (4) the words "Disc One Technical and Cost Proposal Non-Redacted".

Disc Two, if required, must contain the Technical Proposal **excluding** any proprietary information identified as confidential and proprietary in accordance with Attachment A, Paragraph 11 of the Instructions to Vendors. *North Carolina Department of Public Safety* in responding to public records requests will release the information on this disc. It is the sole responsibility of the Vendor to ensure that this disc complies with the requirements of A, Paragraph 11 of the Instructions to Vendors. The following label must be affixed to the disc: (1) Vendor name; (2) the RFP number; (3) the due date; and (4) the words "Disc Two Technical and Cost Proposal– Redacted Copy".

Disc Three must contain the entire Cost Proposal and have the following label affixed to the disc: 1) Vendor name; (2) the RFP number; (3) the due date; and (4) the words "Disc Three Cost Proposal".

2.6 PROPOSAL CONTENTS

Vendors shall populate all attachments of this RFP that require the Vendor to provide information and include an authorized signature where requested. Vendor RFP responses shall include the following items and those attachments should be arranged in the following order:

a) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.

b) Completed and signed version of EXECUTION PAGES, and signed receipt pages of any addenda released in conjunction with this RFP

c) ATTACHMENT A: INSTRUCTIONS TO VENDORS

d) ATTACHMENT B: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

e) Completed version of ATTACHMENT C: PRICING

f) Completed and signed version of ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR

g) Completed and signed version of ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION

h) SEPARATE DOCUMENT (NOT INCLUDED IN THE PROPOSAL ITSELF): If necessary, a list of Vendor issues or proposed alternative language concerning State Terms and Conditions (see Section 2.2 NOTICE TO VENDORS REGARDING TERMS AND CONDITIONS for additional information*).*

i) Completed and signed version of ATTACHMENT F: NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY ALCOHOL/DRUG-FREE WORK PLACE POLICY

j) Completed and signed version of ATTACHMENT G: NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY CERTIFICATE OF ELIGIBILITY – Under the Iran De-Investment Act

2.7 ALTERNATE PROPOSALS

Vendor may submit alternate proposals for various methods or levels of service(s) or that propose different options. Alternate proposals must specifically identify the RFP requirements and advantage(s) addressed by the alternate proposal. Any alternate proposal, in addition to the marking described above, must be clearly marked with the legend: Alternate Proposal #__ for 'name of Vendor'. Each proposal must be for a specific set of services and must include specific pricing. If a Vendor chooses to respond with various service offerings, each must be offered with a separate price and be contained in a separate proposal document. Each proposal must be complete and independent of other proposals offered.

2.9 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

a) **BAFO**: Best and Final Offer, submitted by a vendor to alter its initial offer, made in response to a request by the issuing agency.

b) **BUYER:** The employee of the State or Other Eligible Entity that places an order with the Vendor.

c) **COMMUNITY COLLEGE:** Any of the fifty-eight (58) public North Carolina Community Colleges.

d) **CONTRACT LEAD:** Representative of the North Carolina Department of Public Safety who corresponds with potential Vendors in order to identify and contract with that Vendor providing the greatest benefit to the State and who will administer the contract for the State.

e) **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.

f) **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns commodity in transit and files any claims, and Vendor pays all freight and any related transportation charges. A solicitation may request Vendors to separately identify freight charges in their proposal, but no amount or charge not included as part of the total proposal price will be paid.

g) **LOT**: A grouping of similar products within this RFP.

h) **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.

i) **PREA:** Prison Rape Elimination Act (Public Law 108-79)

j) **QUALIFIED PROPOSAL:** A responsive proposal submitted by a responsible Vendor.

k) **RFP:** Request for Proposal

l) **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.

m) **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions of higher education and other institutions.

n) **VENDOR:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Request for Proposal.

3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS

3.1 METHOD OF AWARD

All qualified proposals will be evaluated and awards will be made to the Vendor(s) meeting the RFP requirements and achieving the highest and best final evaluation, based on the criteria described below.

While the intent of this RFP is to award a Contract(s) to *multiple Vendors* the State reserves the right to make separate awards to different Vendors for one or more line items, to not award one or more line items or to cancel this RFP in its entirety without awarding a Contract, if it is considered to be most advantageous to the State to do so.

The status of a Vendor's e-Procurement Services account(s) shall be considered a relevant factor in determining whether to approve the award of a contract under this RFP. Any Vendor with an E-Procurement Services account that is in arrears by 91 days or more at the time of proposal opening may, at the State's discretion, be disqualified from further evaluation or consideration.

The State reserves the right to waive any minor informality or technicality in proposals received.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

During the evaluation period—from the date proposals are opened through the date the contract is awarded—each Vendor submitting a proposal (including its representatives, sub-contractors and/or suppliers) is prohibited from having any communications with any person inside or outside the using agency, issuing agency, other government agency office, or body (including the purchaser named above, department secretary, agency head, members of the general assembly and/or governor's office), or private entity, if the communication refers to the content of Vendor's proposal or qualifications, the contents of another Vendor's proposal, another Vendor's qualifications or ability to perform the contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals and/or the award of the contract. A Vendor not in compliance with this provision shall be disqualified from contract award, unless it is determined in the State's discretion that the communication was harmless, that it was made without intent to influence and that the best interest of the state would not be served by the disqualification. A Vendor's proposal may be disqualified if its sub-contractor and supplier engage in any of the foregoing communications during the time that the procurement is active (i.e., the issuance date of the procurement to the date of contract award). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this RFP or general inquiries directed to the purchaser regarding requirements of the RFP (prior to proposal submission) or the status of the contract award (after submission) are excepted from this provision.

3.3 PROPOSAL EVALUATION PROCESS

The State shall review all Vendor responses to this RFP to confirm that they meet the specifications and requirements of the RFP. The State reserves the right to waive any minor informality or technicality in proposals received.

The State will conduct a Two-Step evaluation of Proposals:

Proposals will be received from each Vendor in two separate, sealed packages - the Technical Proposal and the Cost Proposal. Each original of both proposals (Technical and Cost) shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.

NOTE: No technical information shall be contained in the cost proposal. No cost information shall be contained in the technical proposal. Inclusion of any cost information in the technical proposal and/or any technical information in the cost proposal shall constitute sufficient grounds to reject Vendor's proposal.

All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.

At that date and time the package containing the technical proposals from each responding firm will be publicly opened and the name of each Vendor announced publicly. A notation will also be made whether a separate sealed cost proposal has been received. Cost proposals will be placed in safekeeping until opened at a later date.

All technical proposals will be evaluated prior to opening any cost proposal.

Upon completion of the technical evaluation, the cost proposals of those Vendors whose technical proposals have been deemed acceptable will be publicly opened. The total cost offered by each firm will be tabulated and become a matter of public record. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position.

At their sole option, the evaluators may request oral presentations or discussion with any or all Vendors for the purpose of clarification or to amplify the materials presented in any part of the proposal. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not; therefore, all proposals must be complete and reflect the most favorable terms available from the Vendor.

Proposals will generally be evaluated according to completeness, content, experience with similar projects, ability of the offer or and its staff, and cost. Specific evaluation criteria are listed section 3.4 EVALUATION CRITERIA, below.

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

The State reserves the right to reject all original offers and request one or more of the Vendors submitting proposals to submit best and final offers (BAFOs), prepared in collaboration with the State after the initial responses to the RFP have been evaluated.

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

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

3.4 EVALUATION CRITERIA

All qualified proposals will be evaluated and award made based on the following criteria considered, to result in an award most advantageous to the State:

Bid evaluations will be conducted using a one-step evaluation process in accordance with 09 NCAC 06B.032 Methods of Source Selection. A maximum score of 60 points will be awarded for bid package completion and technical approach. A maximum score of 40 points will be awarded for cost proposal. A maximum of 100 points may be awarded per vendor during the bid evaluation process.

3.5 PERFORMANCE OUTSIDE THE UNITED STATES

Vendor shall complete ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR. In addition to any other evaluation criteria identified in this RFP, the State may also consider, for purposes of evaluating proposed or actual contract performance outside of the United States, how that performance may affect the following factors to ensure that any award will be in the best interest of the State:

Total cost to the State
Level of quality provided by the Vendor
Process and performance capability across multiple jurisdictions
Protection of the State's information and intellectual property
Availability of pertinent skills
Ability to understand the State's business requirements and internal operational culture
Particular risk factors such as the security of the State's information technology
Relations with citizens and employees
Contract enforcement jurisdictional issues

3.6 INTERPRETATION OF TERMS AND PHRASES

This Request for Proposal serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the Department; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. As such, all terms in the Request for Proposal shall be enforceable as contract terms in accordance with the General Terms and Conditions. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether proposals should be evaluated or rejected, the Department will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the Department's needs as described in the Request for Proposal. Except as specifically stated in the Request for Proposal, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the Department exercising its discretion to reject a proposal in its entirety.

4.0 REQUIREMENTS

This Section lists the requirements related to this RFP. By submitting a proposal the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this RFP. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better proposal, the Vendor is urged and cautioned to submit these items in the form of a question during the question and answer period in accordance with Section 2.4.

4.1 CONTRACT TERM

The Contract shall have an initial term of [three (3) years, beginning on the date of contract award (the "Effective Date"). The Vendor shall begin work under the Contract within fifteen (15) business days of the Effective Date.

4.2 PRICING

Proposal price shall constitute the total cost to Buyer for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other similar fees. Vendor shall not invoice for any amounts not specifically allowed for in this RFP. Complete ATTACHMENT C: PRICING FORM and include in Proposal.

4.3 INVOICES

a) The Vendor must submit one monthly invoice within fifteen (15) calendar days following the end of each month in which work was performed.

b) Invoices must be submitted to the following address: **North Carolina Emergency Management**
Attn: Finance Section
1636 Gold Star Drive
Raleigh NC 27607

4.4 PAYMENT TERMS

a) The Vendor will be compensated at the rates quoted in the Vendor's Cost Proposal.

b) The Vendor will be paid net thirty (30) calendar days after the Vendor's invoice is approved by the State.

4.5 FINANCIAL STABILITY

Each Vendor shall certify it is financially stable by completing the ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential issues from Contracting with a Vendor that is financially unstable. From the date of the Certification to the expiration of the Contract, the Vendor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification.

4.6 VENDOR EXPERIENCE

In its Proposal, Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina. Vendor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

4.7 REFERENCES

Vendors shall provide at least three (3) references for which your company has provided services of similar size and scope to that proposed herein. The State may contact these users to determine the services provided are substantially similar in scope to those proposed herein and Vendor's performance has been satisfactory. Such information may be considered in the evaluation of the proposal.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER
	See Appendix F	

4.8 BACKGROUND CHECKS

Any personnel or agent of the Vendor performing services under any contract arising from this RFP may be required to undergo a background check at the expense of the Vendor, if so requested by the State.

4.9 PERSONNEL

Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Contract Lead. Vendor shall notify the Contract Lead of any desired substitution, including the name(s) and references of Vendor's recommended substitute personnel. The State will approve or disapprove the requested substitution in a timely manner. The State may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the State may request acceptable substitute personnel or terminate the contract services provided by such personnel.

4.10 VENDOR'S REPRESENTATIONS

a) Vendor warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under this Contract. Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. Names of any third party vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

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

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.

5.0 SCOPE OF WORK

In order to meet emergency requirements during disasters, the North Carolina Division of Emergency Management (NCEM) may utilize dewatering pumps, support equipment and technicians for emergency dewatering and flood water drainage. In the case of fire emergencies this equipment can be used to fill water trucks and for pre-wet operations.

5.1 GENERAL

In the event of an emergency, the State will begin ordering dewatering and trash pumps, support equipment and technician services by region from those contractors who are operational, have working communications, have available inventory and are closest to the actual locations where items are required. As local inventory is depleted, the State will move further away geographically and as far as necessary to satisfy its requirements. Bidders are reminded that every emergency will not necessarily result in a requirement of dewatering and trash pumps in every region. Pumps that are four (4) inches and above shall be portable mounted on a trailer or skid. Technical data to include fuel time, operating time per tank, and tank size should be submitted. All pumps shall have a functional equipment hour meter attached.

5.2 OBJECTIVES

For this IFB, the State is set up by regions as specified below.

a. **REGION I:** Cherokee, Clay, Graham, Swain, Macon, Jackson, Haywood, Transylvania, Madison, Buncombe, Henderson, Mitchell, Yancey, McDowell, Rutherford, Polk

b. **REGION II:** Alleghany, Ashe, Watauga, Avery, Wilkes, Caldwell, Burke, Alexander, Iredell, Catawba, Rowan, Stanley, Cabarrus, Mecklenburg, Lincoln, Gaston, Cleveland, Union

c. **REGION III:** Person, Caswell, Rockingham, Stokes, Surry, Durham, Orange, Alamance, Guilford, Forsyth, Yadkin, Davie, Davidson, Randolph, Chatham, Lee, Moore, Montgomery, Anson, Richmond

d. **REGION IV:** Northampton, Halifax, Warren, Vance, Granville, Franklin, Nash, Edgecombe, Wilson, Wake, Johnston, Harnett

e. **REGION V:** Currituck, Camden, Pasquotank, Perquimans, Chowan, Gates, Hertford, Bertie, Martin, Washington, Tyrrell, Dare, Pitt, Beaufort, Hyde

f. **REGION VI:** Wayne, Greene, Lenoir, Craven, Pamlico, Carteret, Jones, Sampson, Duplin, Onslow, Pender, New Hanover, Brunswick, Columbus, Bladen, Roberson, Cumberland, Hoke, Scotland

SEE ATTACHMENT H FOR A GEOGRAPHICAL DISPLAY OF REGIONS.

5.3 TASKS

Support Equipment
Support equipment includes but is not limited to: hoses, pipes, fittings, blowers, gas detectors, recovery systems, strainers, and tie down devices. Support equipment may vary depending on the size and type of pump. Therefore, vendors shall include as much information as possible in the bid package technical approach section, and in the cost proposal section to ensure the State can properly evaluate the bid packages, and place orders.

Delivery and Pick-Up
Delivery of pumps and accessories is FOB anywhere in North Carolina within 24 hours of order placed. Delivery and pick-up costs shall be separate from the rental rate, and all deliveries shall have equipment in "turn-key" status. This requires the awarded contractor to deliver pump and accessories, place where specified, train operators as needed, troubleshoot any problems, and pick-up of rental equipment after being notified rental is no longer needed. Rental charges shall cease being billed upon notification by the State that rental services are no longer required, and pick-up of equipment and accessories must be made within 24 hours of notification by the State that services are no longer needed. Begin and end equipment hour times shall be logged by the contractor and submitted with all appropriate billing documentation.

Technicians/Operators
A technician/operator may be requested by the State to operate the rental equipment for a specified timeframe. In addition, the State understands that equipment operating for a long period of time may need preventative maintenance. Bidders shall document the technician on-site hourly rate in the cost proposal. On-site hourly rate will include all travel costs..]

5.4 ACCEPTANCE OF WORK

In the event acceptance criteria for any work or deliverables is not described in contract documents or work orders hereunder, the State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such work or deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation or testing, as applicable of the work or deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, the State may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

5.5 WARRANTIES

Vendor warrants to the State that all items furnished will be new (unless otherwise specifically requested in this RFP), of good material and workmanship, and Vendor agrees to replace any items which fail to comply with the specifications by reason of defective material or workmanship under normal use, free of State's negligence or accident for a minimum of 90 days from date of acceptance. Such replacement shall include transportation costs free of any charge to the State. This statement is not intended to limit any additional coverage, which may normally be associated with a product. Vendor shall assign to the State all third party warranties applicable to such deliverables. Vendor warrants that the State has all rights necessary to utilize all deliverables for their intended purpose free from all third party claims.

5.6 CERTIFICATION AND SAFETY LABELS

PRODUCT SAFETY LISTING: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution. Having the appropriate certification or safety label affixed to any device delivered pursuant to this solicitation, under the conditions described above, is a material condition of any contract awarded as a result of this solicitation. All costs for product and industry certifications and listings required to supply

conforming products to the State as described in this RFP are the sole responsibility of the Vendor. The certification or safety label shall be affixed and be visible on the OUTSIDE of the all products that require a certification or safety label in order to pass the State Quality Acceptance Inspection.

5.7 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, Vendor shall provide, at the option of the State, up to 6 months after such end date all such reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. If the State exercises this option, the Parties agree that such transition assistance shall be deemed to be governed by the terms and conditions of this Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for performance of the services or other resources utilized.

6.0 CONTRACT ADMINISTRATION

6.1 PROJECT MANAGER AND CUSTOMER SERVICE

Kim Bruske, Purchasing Agent, NC Department of Public Safety, Departmental Purchasing & Services, 3030 Hammond Business Place, Raleigh, NC 27603, (919) 324-6280, is designated as the Contract Officer for the Department.

Jacazza Jones, NC Department of Public Safety, NC Emergency Management - JFHQ, 1636 Gold Star Drive, Raleigh, NC, 27607, (919) 825-2500, is designated as the Contract Lead for the Department concerning administrative and operational issues of this contract.

The Vendor shall designate and make available to the State a project manager. The project manager shall be the State's point of contact for contract related issues and issues concerning performance, progress review, scheduling and service.

6.4 DISPUTE RESOLUTION

The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the State's Contract Lead for resolution. A claim by the State shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under 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.

6.6 CONTRACT CHANGES

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by the State and Vendor.

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Attachments to this RFP begin on the next page.

ATTACHMENT A: 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 any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.

2. **LATE PROPOSALS**: Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.

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

4. **BASIS FOR REJECTION**: Pursuant to 01 NCAC 05B .0501, 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 any 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.

5. **EXECUTION:** Failure to sign EXECUTION PAGE in the indicated space will render proposal non-responsive, and it shall be rejected.

6. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or in any contract arising from it, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFP, including any negotiated terms; (2) requirements and specifications in Sections 4, 5 and 6 of this RFP; (3) North Carolina General Contract Terms and Conditions in ATTACHMENT B: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; (4) Instructions in ATTACHMENT A: INSTRUCTIONS TO VENDORS; and (5) Vendor's Proposal.

7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this proposal, each Vendor must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Proposals that do not comply with these requirements shall be subject to rejection.

8. **SUSTAINABILITY**: To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:

   - All copies of the proposal are printed double sided.
   - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
   - Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
   - Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.

9. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute §143-48 and Executive Order #150 (1999), 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.

10. **RECIPROCAL PREFERENCE:** G.S. §143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying percentage increases to any proposal by a North Carolina resident Vendor. The "Principal Place of Business" is defined as the principal place from which the trade or business of the Vendor is directed or managed.

11. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. §132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. §132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.

12. **PROTEST PROCEDURES:** When a Vendor wishes to protest a Contract resulting from this solicitation that is awarded by the Division of Purchase and Contract, or awarded by an agency in an awarded amount of at least $25,000, a Vendor shall submit a written request addressed to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. A protest request related to an award amount of less than $25,000 shall be sent to the purchasing officer of the agency that issued the award. The protest request must be received in the proper office within thirty (30) consecutive calendar days from the date of the Contract award. Protest letters **shall** contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims. **Note:** Contract award notices are sent only to the Vendor actually awarded the Contract, and not to every person or firm responding to a solicitation. Proposal status and Award notices are posted on the Internet at https://www.ips.state.nc.us/ips/. All protests will be handled pursuant to the North Carolina Administrative Code, 01 NCAC 05B .1519.

13. **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.

14. **COMMUNICATIONS BY VENDORS:** In submitting its proposal, the Vendor agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the solicitation, during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation and/or award of the Contract that is the subject of this RFP. Vendors not in compliance with this provision may be disqualified, at the option of the State, from the Contract award. Only those communications with the using agency or issuing agency authorized by this RFP are permitted.

15. **TABULATIONS**: Proposal tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), https://www.ips.state.nc.us/ips/BidNumberSearch. Click on the IPS BIDS icon, click on Search for Bid, enter the proposal number, and then search. Tabulations will normally be available at this web site not later than one working day after the proposal opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.

16. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM**: Vendor Link NC allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services of potential interests to them available on the Interactive Purchasing

System, as well as notifications of status changes to those solicitations. Online registration and other purchasing information is available at the following website http://www.pandc.nc.gov/.

17. **WITHDRAWAL OF PROPOSAL**: a Proposal may be withdrawn only in writing and actually received by the office issuing the RFP prior to the time for the opening of Proposals identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). A withdrawal request must be on Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of Proposals shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.

18. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in this RFP and in formal Addenda issued through IPS.

19. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; the State of North Carolina will not reimburse any Vendor for any costs incurred prior to award.

20. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

21. **SUBCONTRACTING:** Unless expressly prohibited, a Vendor may propose to subcontract portions of the work to identified subcontractor(s), provided that its proposal clearly describe what work it plans to subcontract and that Vendor includes in its proposal all information regarding employees, business experience, etc. for each proposed subcontractor that is required to be provided for Vendor itself.

22. **INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the State determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

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ATTACHMENT B: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

1. **PERFORMANCE AND DEFAULT:** If, through any cause, Vendor shall fail to fulfill in timely and proper manner the obligations under this contract, the State shall have the right to terminate this contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Vendor shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed on such materials. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of this contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State reserves the right to require at any time a performance bond or other acceptable alternative guarantees from a successful Vendor without expense to the State.

   In case of default by the Vendor, the State may procure the services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Contractor under this contract, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately cease doing business with the Contractor, immediately terminate this contract for cause, and may act to debar the Contractor from doing future business with the State

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Vendor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

3. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this contract.

4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.

   a. G.S. §143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G. S. §105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. §105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

   b. All agencies participating in this Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.

   c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

5. **SITUS:** The place of this Contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in Contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.

6. **GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to is conflict of laws rules.

7. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or

acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.

8. **AFFIRMATIVE ACTION:** The Vendor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.

9. **INTELLECTUAL PROPERTY INDEMNITY**: Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or unpatented invention, articles, device or appliance delivered in connection with this contract.

10. **ADVERTISING:** Vendor agrees not to use the existence of this Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or services. A Vendor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.

11. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall hav e access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. §143-49(9).

12. **ASSIGNMENT:** No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder shall be permitted.

    However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, the State may:

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

    b. Include any person or entity designated by Vendor as a joint payee on the Vendor's payment check.

    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. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of this Contract.

13. **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 $500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract.

    b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of $1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)

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 $250,000.00 bodily injury and property damage; $250,000.00 uninsured/under insured motorist; and $2,500.00 medical payment.

REQUIREMENTS - Providing and maintaining adequate insurance coverage 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.

14. **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 accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days that the State has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

15. **INDEPENDENT CONTRACTOR:** Vendor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this contract. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.

16. **KEY PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the State's assigned Contract Lead. The individuals designated as key personnel for purposes of this contract are those specified in the RFP or Vendor's proposal.

17. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Vendor or its employees shall not be subcontracted without prior written approval of the State's assigned Contract Administrator. Acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) specified therein in accordance with paragraph 21 of Attachment A: Instructions to Vendor.

18. **TERMINATION FOR CONVENIENCE:** The State may terminate this contract at any time by ___ days' notice in writing from the State to the Vendor. In that event, all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for services satisfactorily completed by the Vendor, less payment or compensation previously made.

19. **CONFIDENTIALITY:** Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under this contract shall be kept as confidential, used only for the purpose(s) required to perform this contract and not divulged or made available to any individual or organization without the prior written approval of the State.

20. **CARE OF PROPERTY:** The Vendor agrees that it shall be responsible for the proper custody and care of any property furnished it by the State for use in connection with the performance of this contract or purchased by or for the State for this contract, and Vendor will reimburse the State for loss or damage of such property while in Vendor's custody.

21. **PROPERTY RIGHTS:** All deliverable items produced for or as a result of this contract shall be an become the property of the State, and Vendor hereby assigns all ownership rights in such deliverables, including all intellectual property rights, to the State; provided, however, that as to any preexisting works imbedded in such deliverables, Vendor hereby grants the State a fully-paid, perpetual license to copy, distribute and adapt the preexisting works.

22. **OUTSOURCING:** 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.

    If, after award of a contract, the contractor wishes to relocate or outsource any portion of the work to a location outside the United States, or to contract with a subcontractor for the performance of any work, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract.

    Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under a state contract to a location outside of the United States.

23. **COMPLIANCE WITH LAWS:** 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.

24. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda thereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.

    All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

25. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the State and the Vendor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.

26. **WAIVER:** The failure to enforce or the waiver by the State of any right or of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

27. **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.

28. **ACCOUNTABILITY:** Employees of other public and private organizations providing a service to the agency are accountable to the North Carolina Department of Public Safety (DPS) Departmental Purchasing Contract Administrator and the facility head or designee of the program in which they work. The facility head or designee shall report all non-compliance issues in writing to the North Carolina DPS Departmental Purchasing Contract Administrator. The North Carolina DPS Departmental Purchasing Contract Administrator shall work with the employee of the public or private organization providing the service in order to bring performance up to expectations or terminate services if the conditions justify.

29. **ESCALATION CLAUSE:** Prices offered herein shall be firm for a period of one (1) year from the date of initial contract performance. If the contract provides for an option year(s) and the Department exercises that option(s), the contractor may request a price increase for that year but it must not exceed the change in points during the previous twelve (12) month period in the *Consumer Price Index-All Items (All Urban Consumers: (1982-1984) or 5%, whichever is less. If the requested increase is in compliance with these specified limitations, the new price will be effective thirty (30) days from the date the request is received by the Department.

    Consumer Price Index: U. S. Department of Labor, Bureau of Labor Statistics; www.bls.gov

30. **ALCOHOL/DRUG FREE WORK PLACE POLICY:** A copy of the Department's Alcohol/Drug Free Work Place Policy is attached (ATTACHMENT 1) to this solicitation. The contractor shall use reasonable and good faith efforts to ensure that employees/staff are aware of the Department's policy. The contractor understands that its employees/staff are required to abide by these standards. The contractor further understands that possession, use, manufacture, or distribution of illegal drugs or alcohol in violation of this policy, by employees/staff participating in the performance of this contract, may result in immediate termination of this contract for cause.

31. **PREA:** The NC Department of Public Safety is committed to a standard of zero-tolerance pertaining to unduly familiar or sexually abusive behavior either by another inmate or by staff, volunteer, Offeror, contractor or agent. Staff, volunteers, Offerors, contractors or agents are strictly prohibited from engaging in personal dealings or any conduct of a sexual nature with an inmate or juvenile. Conversation and conduct with inmate or juvenile must be professional at all times. Any sexual act between an inmate or juvenile and staff, volunteer, Offeror, contractor or agent violates the federal Prison Rape Elimination Act of 2003 (PREA) and is punishable, at a minimum, as a Class E felony in North Carolina. Under North Carolina and federal law neither an inmate nor a juvenile can consent to engage in sexual activity with staff, volunteers, Offerors, contractors or agents. Any such activity is considered to be against the will of the inmate or juvenile in the eyes of the law – without respect to what the inmate or juvenile might say.

    Additionally, it is a crime to sell or give any inmate or juvenile any intoxicating drink, barbiturate or stimulant drug, or any narcotic, poison or poisonous substance, except upon the prescription of a physician; to convey to or take from an inmate or juvenile any letters, or verbal messages; to convey any weapon or instrument by which to effect an escape, or that will aid in an assault or insurrection; to trade with an inmate or juvenile for clothing or stolen goods or to sell an inmate or juvenile any article forbidden by rules or DPS policies.

    As a valued employee of DPS, it is important to remember that if you become aware of a report of any incidents of unduly familiar or sexually abusive behavior or sexual harassment, you have a duty to report this information immediately to your contact person with the Agency, by email to prea@doc.state.nc.us, or the DPS Communications office at (800) 368-1985. By signing this contract you acknowledge that you understand and will abide by this policy as outlined above.

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RFP Number: [Add RFP #] 19-013518-BKS

Vendor: Xylem Dewatering Solutions Inc

ATTACHMENT C: PRICING

PUMP TYPE/SIZE	*DAILY RENTAL RATE*	*WEEKLY RENTAL RATE*	*MONTHLY RENTAL RATE*	*QTY AVAILABLE W/IN 24 HRS.*	*QTY AVAILABLE W/IN 36 HRS*
Dewatering and Trash Pumps – Small (carry)					
2" dewatering and trash pumps	49	147	441	10	20
Support equipment		See Appendix B			
3" dewatering and trash pumps	65	195	585	10	25
Support equipment		See Appendix B			
Dewatering and Trash Pumps – Large (trailer)					
4" dewatering and trash pumps	102	306	918	40	80
Support equipment					
6" dewatering and trash pumps	159	447	1,431	40	80
Support equipment					
8" dewatering and trash pumps	293	879	2,637	10	18
Support equipment					
10" dewatering and trash pumps	485	1,374	4,122	4	8
Support equipment					
12" dewatering and trash pumps	392	1,176	3,528	20	30
Support equipment					
16"+ dewatering and trash pumps (list available sizes)	889	2,667	8,001	8	15
Support equipment		See Appendix B & D			

RFP Number: 19-013518-BKS

Vendor: Xylem Dewatering Solutions Inc

	DAILY RENTAL RATE	*WEEKLY RENTAL RATE*	*MONTHLY RENTAL RATE*	*QTY AVAILABLE W/I 24 HRS*	*QTY AVAILABLE W/1 36 HRS*
High Pressure Non-Solids Handling Pumps					
4" pumps	295	885	2,655	10	20
6" pumps	440	1,320	3,960	8	12
8" pumps	455	1.365	4,095	10	15
Support equipment		See Appendix B			
Hoses/Pipes/Fittings/Strainers/Couplings/Hand Tools					
List available sizes		See Appendix B & O & D			

Bidder to provide pricing for on-site technician as listed. Price shall include <u>all</u> costs. **Technician (on-site only):** $ 115 per hour

Transportation	*Equipment Delivery and Pick-Up Costs*
Region I	See Appendix O, C
Region II	See Appendix C
Region III	See Appendix C
Region IV	See Appendix C
Region V	See Appendix C
Region VI	See Appendix C
Ref: Attachment F for Regional Map	

ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with NC General Statute §143-59.4, the Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of this Contract. The State will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award. Please complete items a, b, and c below.

a) Will any work under this Contract be performed outside the United States? ☐ YES ☒ NO

If the Vendor answered "YES" above, Vendor must complete items 1 and 2 below:

1. List the location(s) outside the United States where work under this Contract will be performed by the Vendor, any sub-Contractors, employees, or other persons performing work under the Contract:

2. Describe the corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other sub-Contractors that will perform work outside the U.S.:

b) The Vendor agrees to provide notice, in writing to the State, of the relocation of the Vendor, employees of the Vendor, sub-Contractors of the Vendor, or other persons performing services under the Contract outside of the United States ☒ YES ☐ NO

NOTE: All Vendor or sub-Contractor personnel providing call or contact center services to the State of North Carolina under the Contract **shall** disclose to inbound callers the location from which the call or contact center services are being provided.

c) Identify all U.S. locations at which performance will occur: See Appendix A

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ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION

Name of Vendor: Xylem Dewatering Solutions Inc

The undersigned hereby certifies that: [check all applicable boxes]

[X] The Vendor is in sound financial condition and received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: 12/31/15

[X] The Vendor has no outstanding liabilities to the Internal Revenue Service or other government entities.

[X] The Vendor is not the subject of any current litigation or findings of noncompliance under federal or state law.

[X] The Vendor has not been the subject of any past litigation or findings of any past litigation or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.

[X] He or she is authorized to make the foregoing statements on behalf of the Vendor.

If any one or more of the foregoing boxes is NOT checked, explain the reason in the space below:

Signature 5/24/16 Date

Charles Rival Director Financial Planning & Analysis

Printed Name Title

[This Certification must be signed by an individual authorized to speak for the Vendor]

ATTACHMENT F: ALCOHOL/DRUG-FREE WORK PLACE POLICY

POLICY

It is the policy of the Department of Public Safety to provide a work environment free of alcohol and drugs in order to ensure the safety and well being of employees, correctional clientele, and the general public. All employees of the Department of Public Safety, including permanent full-time, trainee, permanent part-time, permanent hourly, probationary, and temporary shall abide by this policy.

PURPOSE

This document is intended to advise managers and employees of the guidelines of an alcohol/drug free work place, and to set out the penalties for violation(s) of the guidelines.

PROCEDURES/OPERATIONAL GUIDELINES

All employees of the Department of Public Safety are expected to be physically and mentally prepared and able to perform their assigned duties throughout the workday. No employee shall report to the work site impaired by or suffering from the effects of drugs or alcohol.

Individuals reporting for work under the influence or the effects of alcohol and/or drugs shall be issued discipline, up to and including dismissal, consistent with the policy governing personal conduct.

No employee shall manufacture, distribute, or dispense controlled substances (drugs/alcohol) at the work site or away from the work site. No employee shall use "across the counter" medication to the point of impairment while at the work site, or in any situation which may bring discredit to the Department. Use or abuse shall be viewed as personal misconduct and shall be cause for immediate disciplinary action up to and including dismissal.

Possession of an illegal substance in any situation, at work or away from the work site shall be cause for discipline. Possession of controlled substances, i.e. Prescription medication or alcohol, must be in compliance with existing laws. Violations will result in discipline up to and including dismissal based on personal misconduct.

Employees who are arrested, detained, or served a warrant for any alcohol/drug related incident, at the work site or away from the work site have 24 hours to file a written report of the situation with the work unit supervisor/manager, i.e. Warden, Superintendent, Branch Manager. The work unit supervisor/manager shall make a recommendation for appropriate disciplinary action based on the facts of the case after conducting a thorough investigation.

If sufficient facts cannot be obtained due to pending litigation, the work unit supervisor/manager shall request, in writing, that any recommendation for disciplinary action be delayed until the court has disposed of the matter. Once the legal proceedings have been completed, the employee shall furnish a certified copy of the court disposition within 48 hours of the judgment. The recommendation for discipline shall be made at this time, if not previously addressed.

Any conviction of a drug or alcohol related offense, which occurred at the work site, shall be reported to the federal government by the Personnel Office; therefore, such offenses shall be reported to the Personnel Office by the appropriate manager so that the Personnel Office may comply with the requirement.

The Department of Public Safety utilizes the State Employee Assistance Program (EAP) administered through the Office of State Personnel. The EAP provides employees with a comprehensive referral service to aid in coping with or overcoming personal problems, including drug and alcohol problems. Consultants with the State EAP will provide managerial/supervisory training and coordinate employee orientation.

ATTACHMENT G: CERTIFICATION OF ELIGIBILITY

CERTIFICATION OF ELIGIBILITY
Under the Iran Divestment Act

Pursuant to G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-86.55 *et seq.* * requires that each vendor, prior to contracting with the State certify, and the undersigned on behalf of the Vendor does hereby certify, to the following:

1. that the vendor is not identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran;

2. that the vendor shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and

3. that the undersigned is authorized by the Vendor to make this Certification.

Vendor: Xylem Dewatering Solutions Inc

By: David Donahue 5.25.16

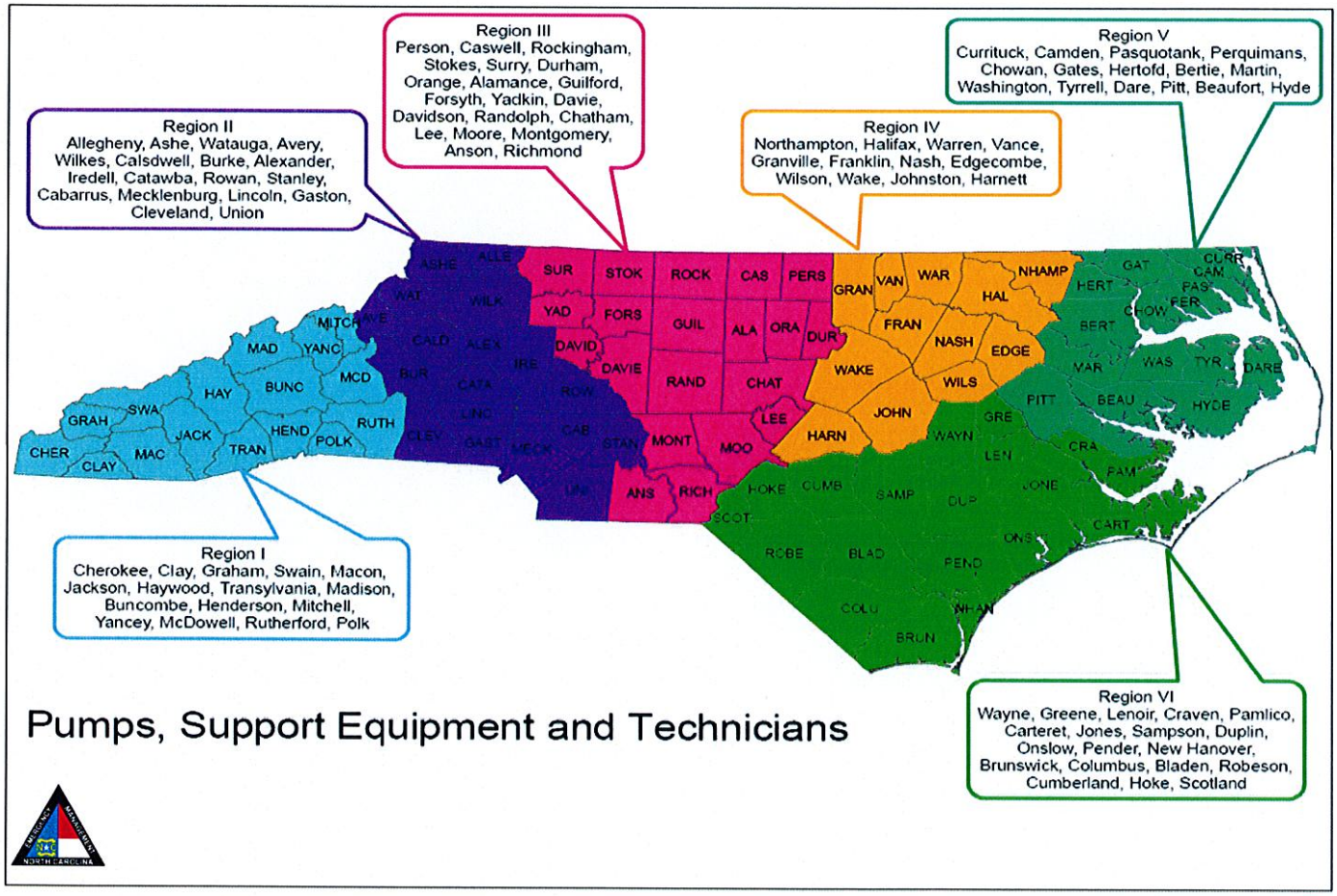
Signature Date

David Donahue Branch Manager

Printed Name Title

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address: https://www.nctreasurer.com/inside-thc-department/QpenGovernment/Pages/Iran-Divestrnent-Act-Resources.aspx and will be updated every 180 days. For questions about the Department of State Treasurer's Iran Divestment policy, please contact Meryl Murtagh at *Meryl.Murtagh@nctreasurer.com* or (919) 814-3852.

* Note: Enacted by Session Law 2015-118 as G.S. 143C-55 *et seq.*, but has been renumbered for codification at the direction of the Revisor of Statutes.

This document last modified by blk01 04/04/16

ATTACHMENT H: REGIONAL MAP