

**STATE OF NORTH CAROLINA
REQUEST FOR PROPOSALS**

RFP#: 23240001

TITLE: Driver Education Request for Proposal

USING AGENCY: Transylvania County Schools

ISSUE DATE: 5/19/23

ISSUING AGENCY: Transylvania County Board of Education
225 Rosenwald Lane
Brevards, NC 28712
(828) 884-6173

Sealed Proposals subject to the conditions made a part hereof will be received until **4:30 p.m., June 2,2023** for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS SHOWN ABOVE.

IMPORTANT NOTE: Indicate firm name ("Technical Proposal" or "Cost Proposal") (*if applicable*), and RFP number on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Direct all inquiries concerning this RFP to: Tom Sweet
(828) 885-7371
tsweet@tcsnc.org

NOTE: Questions concerning the specifications in this Request for Proposals will be received until .
A summary of all questions and answers will be posted on the internet as an addendum,
located under the RFP # being modified.
It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

<http://www.state.nc.us/pandc/>

**Within two days after notification of award of a contract, the vendor must register in
NC E-Procurement @ Your Service (<http://vendor.ncgov.com>).**

INTRODUCTION

Transylvania County Board of Education is seeking entities to provide a program of driver education at their public high schools.

BACKGROUND

Pursuant to NCGS §20-88-1, the State Board of Education and State Superintendent of Public Instruction are required to organize and administer a program of driver education to be offered at the public high schools of North Carolina for all qualified persons as defined in NCGS §20-88.1(a).

NCGS §20-88.1(b) requires the State Board of Education to adopt rules to permit local Boards of Education to enter contracts with public or private entities to provide a program of driver education at public high schools. In accordance with said statute the State Board of Education has adopted regulations governing driving training at said high schools: said regulations being specifically set forth in Section .0300 entitled "Driver Training" of Title 16 of the North Carolina Administrative Code.

SCOPE OF WORK

1. TERM OF AGREEMENT

This agreement shall be in full force and effect for the period commencing July 1, 2022, and ending June 30, 2023. By mutual consent, the terms of this contract may be renewed for a maximum of three (3) years unless terminated by either party.

2. DRIVER EDUCATION PROGRAM FOR ELIGIBLE ENROLLED STUDENTS

The Contractor shall provide Driver Education in accordance with the State Board of Education policy. The curriculum plan adopted by the Contractor must be the State Department of Public Instruction Curriculum or its equivalent. The Contractor reserves the right to modify said curriculum and program as it deems necessary to meet the educational needs of the students and guidelines of the State of North Carolina. The Board shall be notified in writing of any modification of said curriculum and program five (5) days prior to such modification stating reasons for the modification.

3. TRAINING PROGRAM FOR STUDENTS WITH DISABILITIES

The Contractor shall provide Driver Education for students with disabilities (IEP/504, deaf, etc.) who are eligible to enroll in the program. Any students with disabilities enrolled in the program will be provided the same curriculum and program as outlined above. Any students needing additional equipment and/or modification of the prescribed program shall be identified before enrollment. They shall be afforded reasonable accommodations or modifications to permit instruction as required by law. The Board shall provide any special controls or equipment needed by a student with a disability at the Boards expense.

4. EQUIPMENT

The contractor shall supply and maintain dual-controlled, automatic transmission automobiles.

All vehicles utilized under this Agreement shall comply with all requirements of the DMV. The Contractor shall supply to the Board documentation indicating that the vehicles used in the performance of the Agreement are approved by the DMV. All vehicles used under this Agreement shall be inspected at least once every semester for safety, at the Contractors expense, by a qualified mechanic. The Contractor must keep the vehicle clean both inside and outside at all times. An inspection log shall be maintained for such vehicles showing all data pertinent to each such inspection.

5. MONITORING INSTRUCTION

The Contractor shall allow an authorized representative of the Board to monitor, at reasonable times and places, instruction given in each vehicle utilized pursuant to this Agreement. Board shall notify the contractor of the place and time of inspection.

6. TEXTBOOKS AND MATERIALS

The Board agrees to allow Contractor to use any and all textbooks and materials already owned by the Board. Any damage to textbooks and materials shall be paid for by the responsible student before receiving his/her North Carolina Driver Education Certificate. Contractor shall be responsible for updating and replacing textbooks and materials.

7. CLASS SIZE

Classroom instruction shall be presented to a minimum of thirty (30) students and a maximum of fifty (50) students per session, or minimums/maximums based on any safety protocols.

Instruction in the vehicle shall be to a minimum of two (2) students and a maximum of three (3) students per session.

8. INSTRUCTION PER DAY

The program will be reasonably available on a year round basis to all eligible students. The vehicle instruction may be made at time periods as follows:

- 8.1. After school until 9:00 o'clock p.m.;
- 8.2. Saturdays from 8:00 o'clock a.m. to 8:30 o'clock p.m.; and
- 8.3. At other times agreeable to the Board, the Contractor and the eligible student.
- 8.4. The driving time is not to exceed two (2) hours in any one day for any student. The classroom instruction shall not exceed six hours per day per student.
- 8.5. All requirements for qualification of students for enrollment of eligible students including physical examinations and other examinations, evaluations or testing which are now or may hereafter be required shall be done entirely at times other than the regular instructional day of the school and no student shall be requested or required to be absent from a portion of the regular instructional day to comply with any such requirements.

9. INSTRUCTION

All instructors under this Agreement must possess a valid North Carolina driver's license and must have a driving record acceptable to the Board; said driving record must be presented to the Board for its review prior to that person beginning instruction. In addition, all instructors shall: (1) Hold a driver education certificate issued by the State Board of Education or have certified status according to the minimum standards established by Rule .0302 of the driver training section of Title 16 of the North Carolina Administrative Code. Board preference is instructors being certified as regular classroom teachers, retired or current.

10. LEASING OF CLASSROOMS

The Board herein leases to the Contractor classroom space in Transylvania County High School(s) for the purpose of teaching the classroom portion of this program. Scheduling of the classroom space shall be at times and places to be set by the Contractor and the Board. In accordance with Board of Education policy #5030, the Contractor may be charged for the use of facilities if the class falls outside of the normal operations of each school's mechanical system. In such cases, the Board shall reimburse the contractor for such fees.

11. COORDINATION

The contractor will take responsibility for scheduling students, conducting parent orientation, issuing permits, issuing completion certificates, and coordinating with the Registrar at each school site. The Board shall/will be responsible to provide completion certificates. This coordination will include, but not be limited to periodic meetings, prior to the scheduling of the students, between a representative of the Contractor and a representative of the Board to determine student scheduling agreeable to both the Contractor and the Board. The Board shall make students available for health and vision screening by Department of Motor Vehicles representatives on a reasonable basis.

12. PERMITS AND CERTIFICATES

All eligible students must obtain either a temporary learner's permit or a restricted instruction permit before they begin behind-the-wheel instruction.

13. PROFICIENCY EXAMINATION

Transylvania County Schools are solely responsible for scheduling and administering a Department of Public Instruction proficiency examination to students who wish to take it.

Students who take this test and complete it successfully will be waived from taking the 30 hours of classroom instruction. All students will be required to take the 6 hours of behind-the-wheel instruction.

14. INSURANCE

During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:

- 14.1. Worker's Compensation - The contractor shall provide and maintain Workers 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 Contractor's employees who are engaged in any work under the contract.
- 14.2. 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.

- 14.3. 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/underinsured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

15. PAYMENT PROCEDURE FOR ELIGIBLE STUDENTS

The Board shall pay to the Contractor an amount not to exceed the allowed allotment the Board receives from the North Carolina Department of Public Instruction. In addition, the Contractor may collect an amount, not to exceed sixty-five dollars (\$65.00) from each eligible student that enrolls in the driver education program. The sixty-five dollar (\$65.00) fee shall be collected by the Contractor before enrollment of the behind-the-wheel phase of driver education unless Contractor and student/parent make separate arrangements.

Payment shall be made in twelve equal, monthly installments. In consideration of this payment by the Board, and the sixty-five dollar (\$65.00) fee from the student/parent, the Contractor shall provide six hours of behind-the-wheel instruction and thirty hours of classroom instruction for each eligible student qualified under North Carolina Guidelines.

By the 30th of each month, the Contractor shall provide the Board a list of names of the students who receive driver education that month. The Contractor shall be allowed to collect a sixty-five dollar (\$65.00) additional payment from eligible students. However, the Board shall not be responsible for any additional payments above the total allotment received from the North Carolina Department of Public Instruction. The Board shall make payment to the Contractor by the tenth day of each preceding month.

16. WAIVER OF STUDENT FEE

Any student fee waived by the Board shall be paid by the Board to the Contractor at time of invoice

17. HOLD HARMLESS

The Contractor shall hold harmless from all liability and indemnity the Board, its officers and employees against every claim or demand which may be made against the Board, its officers, employees or students, resulting from or arising out of the Contractor's operations under this Agreement, except where the sole cause of such injury or damage is the willful act or omission of an officer, employee, agent or student of the Board.

The Contractor, at its own expense, shall defend any and all legal proceedings that may be brought against the Board, its officers and employees, on any such claim or demand and shall satisfy any judgment that may be rendered against any of them.

Contractor acknowledges that it is not an agent, servant or employee of the Board.

Contractor waives all claims for contribution, indemnity, subordination which it or its agents, servants or employees may have against the Board.

18. INDEPENDENT CONTRACTOR

The Contractor, in the performance of this Agreement, shall be and act as an Independent Contractor, its officers, employees and agents shall not be considered officers, employees or agents of the Board. As such, the Contractor agrees to provide all manpower necessary to fully perform all aspects of the Driver Education program. This shall include, but not be limited to, clerical assistance, instructors, and coordinators. Furthermore, except as noted herein, the Contractor shall have complete control of its employees and instructors and shall make all decisions regarding hiring, promotion, salary, discipline and termination.

19. ASSIGNMENTS

The obligations of the Contractor under this Agreement are not assignable (may not be subcontracted) by the Contractor, either in whole or in part, without the prior written consent of the Board.

20. SCHEDULING OF ELIGIBLE ENROLLED STUDENTS

The scheduling of eligible enrolled students by the Contractor and the Board for thirty (30) hours classroom or six (6) hours behind-the-wheel schedule may include, but is not limited to, the Contractor, the Board and the students. The driving time is not to exceed two (2) hours in any one day for any student. The Contractor will provide the necessary sessions of thirty (30) hours 5 of classroom instruction that are agreeable to Contractor, Board and Students.

21. ONLINE INSTRUCTION

Each student may be allowed to participate in the WRESA Online Driver Education program and the fees charged for the online program will be in lieu of the above referenced student fee.

Participation will be voluntary by the student-parent/guardian and student is responsible along with parent/guardian for registering and meeting the online program requirements.

22. TERMINATION OF AGREEMENT FOR DEFAULT

If either party defaults in the performance of any of the terms of this Agreement, the non-defaulting party may terminate the Agreement upon thirty (30) days written notice to the other party .

This Agreement shall automatically terminate in the event of revocation of the license of Contractor which is required by G. S. 20-320 et.seg. Contractor may be terminated from Contract immediately for cause of misconduct.

23. SOLICITATION OF ADDITIONAL BEHIND-THE-WHEEL DRIVER EDUCATION

The Contractor agrees not to solicit students and/or relatives of students to enroll in or purchase behind-the-wheel driver education services or any services or products other than those provided for by this Agreement.

24. ADMINISTRATIVE CODE

Whenever amendments are made to Title 16 of the North Carolina Administrative Code both the Board and the Contractor are responsible for implementing any modifications in the program necessary to implement these changes. If changes result in added cost to Contractor, a bid adjustment will be negotiated between Contractor and Board.

25. COMPLIANCE WITH OTHER REQUIREMENTS

The Contractor shall comply and continue to comply with all applicable requirements set out in subsection (a), (b), and (c) of Section .0303 of the Department of Motor Vehicle regulation and shall utilize only those instructors who are certified, to the satisfaction of the Board and the Contractor, and who are competent to train students. This information will be maintained by the Contractor and copies provided to the Board.

26. STUDENTS FAILING COURSE

Any student failing the Driver Education program will not be permitted to enroll again as per G. S. 20-88.1. The Contractor is responsible for forewarning students and their parents of this policy and for monitoring it.

27. CONDUCT

The Contractor agrees to enforce in the classroom and vehicle instruction all the policies of the Board and the student handbook regulations of each Transylvania County high school. The Contractor further agrees that all instructors shall conduct themselves in a manner similar to those required of teachers in the Transylvania County School System by the Board. In situations where an instructor does not conduct themselves by the standards required of teachers employed by the Board, at the request of the Board the Contractor shall remove the instructor indefinitely from working with Transylvania County Schools.

28. JESSICA LUNSFORD ACT

Under North Carolina law, all employers of personnel who have direct interaction with students as part of their job must conduct an annual check of such employees on the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry. As a term of this contract, said annual checks must be performed by the employer and reported to the Superintendent. The Board of Education prohibits any personnel listed on such Registries from having direct interaction with students.

29. DRIVING STUDENTS ON A SINGULAR BASIS

Driver's education teachers will not drive students on a singular basis. We recognize that there may be emergency situations, which develop that would require a teacher to supervise a single student. It would be our expectation that these situations be documented and reported to the school system as exceptions. Under no circumstances should a teacher drive a student without an approved third party present.

30. TERMINATION OF AGREEMENT FOR LACK OF FUNDING

If the NC State Legislature and/or NC State Board of Education, at any point in time, no longer requires that Driver Education be a requirement of the public school system or fails to provide the necessary funds to the Board to maintain Driver Education, then the Board will have the option to cancel and terminate Agreement with notice to the Contractor

31. PURCHASE OF FUEL

The Board shall allow the Contractor to purchase fuel from TCS school bus garage at replacement cost of the fuel. The Contractor agrees said fuel can only be used for the instruction of eligible students of Transylvania County Schools. Eligibility includes public school, home school, private school, charter school students in Transylvania County. The Board shall invoice the fuel purchase at the end of each month. The Contractor shall pay within fifteen days of invoice.

THE PROCUREMENT PROCESS

The following is a general description of the process by which a firm will be selected to provide services.

1. Request for Proposals (RFP) is issued to prospective contractors.
2. A deadline for written questions is set. (See cover sheet of this RFP for details.)
3. Proposals in one original and two copies will be received from each offeror in a sealed envelope or package. Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.
4. All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.
5. At that date and time the package containing the proposals from each responding firm will be opened publicly and the name of the offeror and cost(s) offered will be announced. 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 an offeror's pricing position.
6. At their option, the evaluators may request oral presentations or discussion with any or all offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.
7. Proposals will be evaluated according to completeness, content, experience with similar projects, ability of the offeror and its staff, and cost. Award of a contract to one offeror does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous to the State.
8. Offerors are cautioned that this is a request for offers, not a request to contract, and the State reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the State.

PROPOSAL REQUIREMENTS

The response to this RFP shall consist of the following sections:

- Corporate Background and Experience
- Financial Statement
- Project Staffing and Organization
- Technical Approach
- Cost Proposal

1. Corporate Background and Experience

This section shall include background information on the organization and should give details of experience with similar projects. A list of references (including contact persons and telephone numbers) for whom similar work has been performed shall be included.

2. Financial Statement

The offeror's most recent audited financial statement or similar evidence of financial stability shall be provided.

3. Project Organization

This section must include the proposed staffing, deployment and organization of personnel to be assigned to this project.

The offeror 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. Technical Approach

This section shall include, in narrative, outline, and/or graph form the offeror's approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. A description of each task and deliverable and the schedule for accomplishing each shall be included.

5. Cost Proposal

The Cost Proposal shall be submitted in a separate, sealed package and contain:

- Personnel costs (including hourly rates and total hours)
- Travel and Subsistence Expenses
- Subcontractor Costs (if any)
- Other Costs (e.g., office expenses)
- TOTAL COST A total not to exceed cost representing the maximum amount for all work to be performed must be clearly indicated under this heading.

***NOTE: A cost summary sheet is often helpful for evaluation.
Make the format very clear so you are not "comparing apples and oranges".***

**COST PROPOSAL/EXECUTION OF PROPOSAL
(example)**

(This can be used for any service procurement but is particularly suited to "fill in the blanks" proposal formats.)

By submitting this proposal, the potential contractor certifies the following:

This proposal is signed by an authorized representative of the firm.

It can obtain insurance certificates as required within 10 calendar days after notice of award.

The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.

All labor costs, direct and indirect, have been determined and included in the proposed cost.

The offeror has attended the *(mandatory?)* conference/site visit and is aware of prevailing conditions associated with performing these services *(if applicable)*.

The offeror can and will provide the specified performance bond or alternate performance guarantee *(if applicable)*.

The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.

The offeror is registered in NC E-Procurement @ Your Service or agrees to register within two days after notification of contract award.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 30 days from the date of the opening, to furnish the subject services for a cost not to exceed the allowed allotment the Board receives from the North Carolina Department of Public Instruction.

OFFEROR: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____ FAX: _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____

E-MAIL: _____

BY: _____ TITLE: _____ DATE: _____

(Signature)

(Typed or printed name)

ACCEPTANCE OF PROPOSAL

(Using Agency Name)

BY: _____ TITLE: _____ DATE: _____

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL.

Unsigned proposals will not be considered.

GENERAL INFORMATION ON SUBMITTING PROPOSALS

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation. Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.

6608480. **COMPETITIVE OFFER:** Pursuant to the provision of G.S. 143-54, and under penalty of perjury, the signer of any proposal submitted in response to this RFP thereby certifies that this proposal has not been arrived at collusively or otherwise in violation of either Federal or North Carolina antitrust laws.

6608568. **ORAL EXPLANATIONS:** The State shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.

6608656. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.

6608744. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

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

It is desirable that all responses meet the following requirements:

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

6608832. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the State of North Carolina will not reimburse any offeror for any costs incurred prior to award.

6608920. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of 30 days. Although the contract is expected to be awarded prior to that time, the 30 day period is requested to allow for unforeseen delays.

6609008. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.

6609096. **CONFIDENTIALITY OF PROPOSALS:** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing agency, government or private, until after the award of the contract. Offerors not in compliance with this provision may be disqualified, at the option of the State, from contract award. Only discussions authorized by the issuing agency are exempt from this provision.

6609184. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the State when received.

6609272. **OFFEROR'S REPRESENTATIVE:** Each offeror 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.

6609360. **SUBCONTRACTING:** Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.

6609448. **PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.

6609536. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, 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.

6609712. **PROTEST PROCEDURES:**

NOTE: *Insert your agency's protest procedures if procurement and award are within your delegation.*

OR Use the paragraph below if P&C must approve award.

When an offeror wants to protest a contract awarded pursuant to this solicitation, that is over \$10,000.00, they must submit a written request to the State Purchasing Officer, Division of Purchase and Contract, 116 West Jones Street, P.O. Box 29582, Raleigh, NC 27626-0582. This request must be received by the Division of Purchase and Contract within thirty (30) consecutive 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. Contract status and award notices are posted on the internet at <http://www.state.nc.us/pandc/>. Offerors may call (*agency's phone number*) to obtain a verbal status of contract award. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519.

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

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

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS
(Contractual and Consultant Services)

NOTE: For “Agency”, substitute “Department”, “University”, etc., as applicable.

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.

6609800. **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

6609888. **INDEPENDENT CONTRACTOR:** The Contractor 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. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.

6609976. **KEY PERSONNEL:** The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Agency's Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified in the Contractor's proposal.

6610064. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Agency's Contract Administrator. Acceptance of an offeror's proposal shall include any subcontractor(s) specified therein.

6610152. **PERFORMANCE AND DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, the Agency shall thereupon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined.

In case of default by the Contractor, the State may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State reserves the right to require performance bond or other acceptable alternative guarantees from successful offeror without expense to the State.

Upon the entering of a judgment of bankruptcy of insolvency by or against the Contractor, the Agency may terminate this contract for cause.

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 by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

6610240. **TERMINATION:** The Agency may terminate this agreement at any time by 10 days notice in writing from the Agency to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Agency, become its property. If the contract is terminated by the Agency as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.

6610328. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Agency for the purpose set forth in this agreement.

6610416. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency.

6610504. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the State for loss of damage of such property.

6610592. **COPYRIGHT:** No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

6610680. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.

The Contractor shall retain all records for a period of three years following completion of the contract.

6610768. **ASSIGNMENT:** No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:

- a. Forward the contractor's payment check(s) directly to any person or entity designated by the Contractor, or
- b. Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).

In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

6610856. **COMPLIANCE WITH LAWS:** The Contractor 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.

6601308. **AFFIRMATIVE ACTION:** The Contractor shall 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.

6601396. **INSURANCE:** During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:

- a. Worker's Compensation - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is subcontracted, the contractor shall require the subcontractor to provide the same coverage for any of its 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 \$500,000.00 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 \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

6601484. **ADVERTISING:** Contractor agrees not to use the existence of this contract, the name of the agency, or the name of the State of North Carolina as part of any commercial advertising.

6601572. **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 Request for Proposals, any addenda thereto, and the offeror'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.

6601660. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the Agency and the Contractor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.

6601661. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

6610944. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.

6610945. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses, 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, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

11/7/01