

INSTRUCTIONS TO BIDDERS

1. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Request for Quotation, the specifications, and the North Carolina State University's General Contract Terms and Conditions. The University objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder's response. This applies to any language appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of this document, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
 - **BIDDER:** Company, firm, corporation, partnership, individual, etc., submitting a response to an Invitation for Bids.
 - **TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities only.
 - **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies, unless exempted by statute, rule, or special term and condition specific to this bid.
 - **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.
4. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.
5. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) North Carolina State University General Contract Terms and Conditions, and (4) Instructions to Bidders.
6. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, bidder's offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
7. **PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
8. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
10. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The bidder remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Bidders are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
11. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
12. **ACCEPTANCE AND REJECTION:** The University reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
13. **REFERENCES:** The University reserves the right to require a list of users of the exact item offered. The quote evaluators may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.

14. **TAXES:**

- **FEDERAL:** University is exempt from Federal Taxes, such as excise and transportation. Exemption is claimed under Registry No. 56-70-0047K as provided by Chapter 32 of the Internal Revenue Code. University's tax exempt id no is 400021.
- **OTHER:** 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.

15. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to the University as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the University to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the University or the bidder, the University reserves the right to accept any item or group of items on a multi-item bid. The University reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the University to be pertinent or peculiar to the purchase in question.

After the foregoing evaluation, the quotes will be reviewed to determine if there are any North Carolina resident Bidders that submitted responsive quotes and requested the price-matching preference pursuant to Executive Order #50 and G.S. § 143-59. If such Bidders are found, the evaluators and/or purchaser will then determine whether any of the North Carolina resident Bidders qualify for this preference and, if so, make the contract award pursuant to Paragraph 22 below.

16. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, the University 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.
17. **CONFIDENTIAL INFORMATION:** Bidders should give specific attention to the identification of those portions of their proposals that they deem to be trade secrets and provide any justification why such materials, upon request, should not be disclosed. However, if the information you deem confidential is NOT a trade secret then the information will be released. The University may only keep information confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3.

Bidders shall clearly identify each and every section that is deemed to be confidential, proprietary or a trade secret (it is **NOT** sufficient to preface your proposal with a proprietary statement, or to use a page header or footer that arbitrarily marks all pages as confidential). Any individual section of the proposal that is not labeled as confidential with an accompanying statement concerning the rationale for its claimed confidentiality shall be considered public information.

CONFIDENTIALITY OF BIDS: In submitting its quote, the Bidder agrees not to discuss or otherwise reveal the contents of the quotes to any source outside of the University, until after the award of the contract. All Bidders are advised that they are not to have any communications with the using department during the evaluation of the bids (i.e., after the opening of the bids and before the award of the contract), unless the University's purchaser contacts the Bidder(s) for purposes of seeking clarification. A Bidder shall not: transmit to the using department any information commenting on the ability or qualifications of any other Bidder to provide the advertised good, equipment, commodity; defects, errors and/or omissions in any other Bidder's quote and/or prices at any time during the procurement process; and/or engage in any other communication or conduct attempting to influence the evaluation and/or award of the contract that is the subject of this RFQ. Bidders not in compliance with this provision may be disqualified, at the option of the University, from the contract award. Only those communications authorized by this RFQ are permitted.

18. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become the University's property. Each individual sample must be labeled with the bidder's name, bid number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
19. **PROTEST PROCEDURES:** A party wanting to protest a contract award pursuant to this solicitation must submit a written request to the Director of Purchasing, North Carolina State University, Purchasing Department, Campus Box 7212, Raleigh, NC 27695-7212. This request must be received in the University Purchasing Department 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. Bidders may call the purchaser listed on the first page of this document 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.

If a protest is based on a challenge to the qualification of a North Carolina resident Bidder awarded a contract pursuant to Executive Order #50 (price-matching preference), the University may request the North Carolina resident Bidder to produce documentation substantiating the North Carolina resident Bidder's qualification for the subject preference. The University

should request the supporting documentation within the 10-day period it has to make the decision on whether to deny or grant a protest meeting and the protest meeting should be scheduled after the anticipated receipt of the documents from the North Carolina resident Bidder. Pursuant to Paragraph 22 below, the North Carolina resident Bidder shall produce to the University the requested documentation within five (5) business days of the University's request and failure to produce the documents by the end of that time period may result in the cancellation of the contract. Also note that any tax, financial, accounting or banking documents the North Carolina resident bidder submits to the University in connection with the resolution of a protest shall not be disclosed to the protester pursuant to G.S. §§132-1.1 and 105-259(b) and the University shall preserve the confidentiality of such documents.

20. **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.
21. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident bidders. The "Principal Place of Business" is defined as the principal place from which the trade or business of the bidder is directed or managed.
22. **EXECUTIVE ORDER #50-PRICE-MATCHING PREFERENCE:** Pursuant to North Carolina General Statute §143-59 (G.S. § 143-59) and Executive Order No. 50 issued by Governor Perdue on February 17, 2010, entitled "Enhanced Purchasing Opportunities for North Carolina Businesses," a price-matching preference may be given to North Carolina resident Bidders on contracts for the purchase of goods. This preference will allow a qualified North Carolina resident Bidder to match the price of the lowest responsible nonresident Bidder, if the North Carolina resident Bidder's price is within five percent (5%) or \$10,000, whichever is less, of the non-resident Bidder's price. G.S. §143-59(c) (1) defines a "resident bidder" as a "bidder that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State. G.S. § 143-59(c)(2) defines a nonresident bidder as a bidder that does not meet the definition in G.S. § 143-59(c)(1). G.S. § 143-59(c)(3) defines a "principal place of business" as the "principal place from which the trade or business of the bidder is directed or managed."

In order to qualify for this preference, a resident Bidder must: (1) request the preference; and (2) complete "Resident Bidder's Certification for Price-Matching Preference under Executive Order #50" (hereinafter the "Certification") included at the end of this solicitation. The Certification may not be submitted after the public opening of the bids. By executing the Certification, the Bidder agrees to provide any additional information or documentation requested by the University to confirm the above certifications and statements within five (5) business days of request (including tax filings, banking statements, financial and accounting statements reflecting Bidder's payment of the subject taxes and such other information regarding Bidder's management or directors of its business or trade of its principal place of business).

The University will evaluate the quotes in accordance with the award criteria stated in this RFQ to determine the lowest responsible Bidder. If the lowest responsible Bidder is a North Carolina resident Bidder, then there will be no consideration of the price-matching preference. If the lowest responsible quote was submitted by a nonresident Bidder and there are no North Carolina resident bidders that submitted a price that was within 5% or \$10,000 of the nonresident Bidder's price, then none of the North Carolina resident bidders qualified for the price-matching preference and no review of the Resident Bidder's Certifications is required.

If the lowest responsible quote was submitted by nonresident Bidder and there are one or more North Carolina resident Bidders that submitted a price that was within 5% or \$10,000 of the nonresident Bidder's price, then the evaluators shall review the Certification(s) of the resident Bidder(s) to determine whether the resident Bidders have certified compliance with G.S. § 143-59(c)(1), (3) and the information and documentation provided in or with the Certification supports the resident Bidder(s) certifications. The evaluators may seek clarification of the certifications and/or information in a resident Bidder's Certification and request documentation (including but not limited to income tax or unemployment tax returns, reports and/or filing (annual and/or quarterly); banking statements or financial/accounting statements reflecting Bidder's payment of income taxes or unemployment taxes to the State of North Carolina and such other information regarding Bidder's management or directors of its business or trade of its principal place of business). If the resident Bidder's Certification for the price-matching preference is challenged in a protest, the resident Bidder shall provide the foregoing information and/or documentation to the University within five (5) business days of receiving a request from the University for such information and/or documentation. Pursuant to G.S. §§ 132-1.1, 105-259(b) and Paragraph 17 of the Instructions to Bidders, the University is prohibited from making public disclosures of the Bidder's tax information and documents (except if one of the 39 exceptions applies in G.S. § 105-259(b)) and the University shall preserve the confidentiality of the tax information and/or documents received in response to a request for clarification (or, as discussed below, to resolve a protest challenging resident Bidder's qualification for the price-matching preference). In order to further preserve the confidentiality of Bidder's tax information and documentation provided to the University, the Bidder shall comply with Paragraph 17 of the Instructions to Bidders and mark "CONFIDENTIAL" at the top and bottom of each page of the information and documentation. After review of the Certification(s) and any clarification, the evaluators shall include in their recommendation for award a finding that the North Carolina resident Bidder(s) was or was not qualified for the price-matching preference.

If more than one North Carolina resident Bidder qualified for the price-matching preference, then the evaluators shall prioritize the qualified North Carolina resident bidders according to their original quotes, from lowest to highest, so that the qualified North Carolina resident Bidder that submitted the lowest quote should get the first opportunity to match the quote of the nonresident lowest responsible Bidder. If the lowest responsible and qualified North Carolina resident Bidder declines to accept contract award, then the contract should be offered to the next lowest qualified North Carolina resident Bidder and to continue in this manner until either a qualified North Carolina resident Bidder accepts to contract award or the award is made to nonresident Bidder, if no qualified North Carolina resident Bidder accepted the award. If two responsible North Carolina resident bidders qualify for the price-matching preference, both had the same quote, then the evaluators may: (1) consider the information provided in these bidders' Certifications or publicly available information to determine, which Bidder the contract award would have a greater impact of stimulating or sustaining the North Carolina economy and/or is most likely to create or save jobs (e.g., if the choice is between a resident broker and a resident manufacturer of the subject goods, then the contract should be awarded to the resident manufacturer); (2) consider the unemployment rate in the municipality or county where each Bidder's principal place of business is located; or (3) seek clarification from the bidders to ascertain the impact on their respective businesses if offered the award of the contract.

If the resident bidder requests and qualifies for the price-matching preference, the resident bidder will first be offered the contract award and it will have three (3) business days to accept or decline the award based on the lowest responsible nonresident bidder's price.

If at any time during or after the procurement process (including but not limited to clarifications and resolution of protests), the University determines that: the certifications or information in the Certification were false, substantially inaccurate, materially misleading; or the Bidder failed to provide, within the specified time period, the information and documentation the University requested, then the University may:

- (1) Cancel the resident Bidder's contract and/or purchase order that was awarded based on the price-matching preference and resident Bidder shall be liable for all its cost it incurs as a result of the cancellation and all increased costs of the University may incur by awarding the contract to the next lowest Bidder;
- (2) Bidder will not be entitled to any price-matching preference in any future University bidding opportunities;
- (3) Action may be taken against the bidder under the False Claims Act, G.S. §1-605 through 1-617, inclusive, for submitting a false Certification for the price-matching preference under Executive Order #50 (including but not limited to treble damages and civil penalties); and/or
- (4) Debar Bidder from doing business with the State of North Carolina for a period determined by the State Purchasing Officer and/or Board of Award.

23. **ENTERPRISE-LEVEL IT SYSTEMS OR TECHNOLOGIES:** The University is committed to promote and integrate universal IT accessibility in the delivery of its resources and to develop innovative solutions to accessibility challenges for students, faculty and staff. Vendors must:

- a. Assure all features, components and sub-systems of the software or IT System contained on this RFQ **fully comply** with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), (<http://www.section508.gov>);

OR

Detail why any feature, component or sub-system contained in this RFQ does not **fully comply** with Section 508, and the way in which the proposed product is out of compliance;

- b. If the Voluntary Product Accessibility Templates (VPAT) (<http://www.access-star.org/ITI-VPAT-v1.2.html>) are used, they must include compliance checklists for:
 1. Technical Standards,
 2. Function and Performance Criteria
 3. Documentation and Support
- c. The product offered in response to this RFQ is subject to an accessibility evaluation by the University.

NORTH CAROLINA STATE UNIVERSITY
GENERAL CONTRACT TERMS AND CONDITIONS

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.
2. **SITUS:** The place of this contract, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
3. **DEFAULT AND PERFORMANCE BOND:** In case of default by the bidder, the University may procure the articles or services from other sources and hold the bidder responsible for any excess cost occasioned thereby. The University reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to the University.

The Bidder shall be in default, if its Certification submitted for a price-matching preference under Executive Order #50 and G.S. §143-59 was false and/or contained materially misleading or inaccurate information, and/or Bidder failed to provide information and documentation requested by the University to substantiate Bidder's Certification.

In addition, in the event of default by the Bidder under this contract, the State may immediately cease doing business with the Bidder, immediately terminate for cause all existing contracts the State has with the Bidder, and de-bar the Bidder from doing future business with the State. The State may take action against the Bidder under the False Claims Act, G.S. §1-605 through 1-617, inclusive, for submitting a false Certification for the price-matching preference under Executive Order #50 (including but not limited to treble damages and civil penalties).

Upon the Bidder filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Bidder, the University may immediately terminate, for cause, this contract and all other existing contracts the Bidder has with the State, and de-bar the Bidder from doing future business with the State.

4. **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 by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
5. **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 bidder to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. The University reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
6. **AVAILABILITY OF FUNDS:** Any and all payments to the bidder are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
7. **TAXES:** Any applicable taxes shall be invoiced as a separate item.

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.

8. **INSPECTION AT BIDDER'S SITE:** The University reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective bidder prior to contract award, and during the contract term as necessary for the University's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
9. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The University is responsible for all payments to the bidder under the contract. Payment may be made by procurement card and it shall be accepted by the bidder for payment if the bidder accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the bidder.

10. **AFFIRMATIVE ACTION:** The bidder 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.
11. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
12. **SAFETY STANDARDS:** 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.
13. **PATENT:** The bidder shall hold and save the University, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.
14. **ADVERTISING:** Bidder shall not use the existence of this contract or the name of the State of North Carolina or North Carolina State University as part of any advertising.
15. **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. Further, the University Internal Auditor shall have the same access to persons and records.
16. **ASSIGNMENT:** No assignment of the bidder's obligations nor the bidder'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 bidder, the University may:
 - a. Forward the bidder's payment check directly to any person or entity designated by the bidder, and
 - b. Include any person or entity designated by bidder as a joint payee on the bidder's payment check. In no event shall such approval and action obligate the State to anyone other than the bidder and the bidder shall remain responsible for fulfillment of all contract obligations.
17. **INSURANCE:**

COVERAGE - During the term of the contract, the bidder 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 bidder shall provide and maintain the following coverage and limits:

 - a. **Worker's Compensation** - The bidder 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 bidder's employees who are engaged in any work under the contract. If any work is sublet, the bidder shall require the subcontractor 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, on a per occurrence basis shall be \$1,000,000.00 bodily injury and property damage; \$1,000,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

REQUIREMENTS: Providing and maintaining adequate insurance coverage is a material obligation of the bidder 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 bidder 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 bidder shall not be interpreted as limiting the bidder's liability and obligations under the contract.
18. **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.

19. **GENERAL INDEMNITY:** The bidder 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 bidder in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the bidder provided that the bidder is notified in writing within 30 days that the State has knowledge of such claims. The bidder 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 bidder goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
20. **CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least 90 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving 30 days prior notice in writing to the other party.

CANCELLATION (EXECUTIVE ORDER #50 CONTRACTS): A contract awarded to a North Carolina resident Bidder pursuant to Executive Order #50 and G.S. §143-59 may be cancelled by the University, if the University determines that the Bidder's certification or information in Resident Bidder's Certification for Price-Matching Preference under Executive Order #50 is false, materially inaccurate or misleading. The Bidder shall bear all losses and liability resulting from the cancellation of the contract and/or any purchase order and the bidder shall be liable for any additional costs the University may incur by contracting with another supplier of the goods or equipment.

21. **QUANTITIES (University Specific Agreements ONLY):** The award of a University specific agreement neither implies nor guarantees any minimum or maximum purchases thereunder.
22. **PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the bidder to other customers.
 - a. **Notification:** Must be given to the University, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
 - b. **Decreases:** The University shall receive full proportionate benefit immediately at any time during the contract period.
 - c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with the University reserving the right to accept or reject the increase, or cancel the contract. Such action by the University shall occur not later than 15 days after the receipt by the University of a properly-documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
 - d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

23. **SAFETY STANDARDS:** 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 Electrical 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(s) of devices offered and furnished. Further, all items furnished by the successful bidder shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All bidders must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. Construction bidders must comply with *North Carolina Occupational Safety and Health Standards for the Construction Industry, 29CFR 1926*. In addition, bidders shall comply with all applicable occupational health and safety and environmental rules and regulations.

Bidders shall effectively manage their safety and health responsibilities including:

1. **Accident Prevention**
Prevent injuries and illnesses to their employees and others on or near their job site. Bidder's managers and supervisors shall ensure employer's personnel safety by strict adherence to established safety rules and procedures.

2. **Environmental Protection**
Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.
 3. **Employee Education and Training**
Provide education and training to all bidder's employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.
24. **DEBARMENT CERTIFICATION:** Bidder certifies to the best of its knowledge and belief, that it nor any of its principals a) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contract by any Federal agency; b) have not within a three-year period preceding this award been convicted of or had a civil judgment rendered against them for: commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to this submission of offers; or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property; and c) are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses enumerated herein. The bidder certifies that they have not, within a three year period preceding this offer, had one or more contracts terminated for default by any federal agency.
- "Principals" for the purpose of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segments, and similar positions.)
- This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution. Certification of this provision is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to other remedies available to the University, the University may terminate this agreement for default.
- Bidder hereby certifies these conditions and does so by signing the execution page of this quote document.
25. **PERSONAL IDENTIFIERS:** If the University provides the Bidder with personal identifiers as listed in North Carolina General Statute 131-1.10 or any other legally confidential information, Bidder hereby certifies that, pursuant to NCGS 132-1.10, collection of social security number information or other legally confidential information from University is necessary for the performance of Bidder duties and responsibilities on behalf of the University. Bidder further certifies that it shall maintain the confidential and exempt status of any such social security number information, as required by subsection (c)(1) of the statute.
26. **GIFTS:** Pursuant to Executive Order 24, issued by Governor Perdue, and N.C. G.S.§ 133-32, it is unlawful for any vendor or contractor, including, but not limited to, architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor, to make gifts or to give favors to any State employee of the Office of the Governor and Governor's Cabinet Agencies. This prohibition covers those vendors and contractors who:
- (1) have a contract with a governmental agency; or
 - (2) have performed under such a contract within the past year; or
 - (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

RESIDENT BIDDER'S CERTIFICATION FOR PRICE-MATCHING PREFERENCE UNDER EXECUTIVE ORDER #50

NOTICE: The Price-Matching Preference will only be given to Bidders that fully complete this affidavit (i.e., all information must be provided, all supporting documents must be attached, the affidavit must be signed by an authorized representative of the Bidder and the affidavit must be notarized) and demonstrate their qualifications for the Price-Matching Preference through the certification and information provided in this affidavit and any required attachments.

Affidavit of _____ (name of resident Bidder, hereinafter the "BIDDER")

PART I

Please check the box applicable to the Bidder's business in order for the Bidder to be considered for the price-matching preference established by Executive Order #50 and North Carolina General Statute §143-59(c)(1).

I hereby certify that the Bidder paid unemployment taxes to the State of North Carolina for the most recent quarter or annually, and has specifically done so for the last such payment period.

OR

I hereby certify that the Bidder paid income taxes to the State of North Carolina each calendar quarter, or otherwise annually, and has specifically done so for the last such payment period.

AND

PART II

1. I hereby certify that the Bidder is a resident of the State of North Carolina under North Carolina General Statute §143-59(c)(1), in that, Bidder's principal place of business is located in North Carolina.

YES / NO (circle one)

A. **Business Type** (circle one of the following): CORPORATION (ALL TYPES); LIMITED LIABILITY COMPANY; GENERAL PARTNERSHIP; LIMITED PARTNERSHIP; LIMITED LIABILITY PARTNERSHIP; SOLE PROPRIETORSHIP; INDIVIDUAL; UNINCORPORATED ASSOCIATION; OR OTHER.

B. Provide address of principal place of business/principal office in North Carolina:

Street Address (no P.O. Box number)

City, State, Zip Code

Is the above address the location of Bidder's headquarters? YES/NO (circle one)

If Bidder has a public website, provide the link/address: _____

- C. **ATTACH A COPY OF BIDDER'S MOST RECENT FILINGS WITH THE NORTH CAROLINA SECRETARY OF STATE** (such as Bidder's Certificate of Authority, Annual Report or such other filing that discloses a North Carolina business address for the Bidder).

OR (check the box below)

Bidder certifies that its business is **not** required to make filings with the North Carolina Secretary of State.

2. I hereby certify that the Bidder is a resident of the State of North Carolina under North Carolina General Statute § 143-59(c)(3), in that, Bidder directs or manages its trade or business from its principal place of business in North Carolina.

YES / NO
(circle one)

A. State the number of Bidder's employees that work at the North Carolina principal place of business:

B. State the total number of employees in Bidder's entire workforce:

C. Briefly describe in the box below how Bidder manages or directs its business or trade from its North Carolina principal place of business:

IF BIDDER DESIRES TO KEEP CONFIDENTIAL ITS ANSWERS TO QUESTION 2.A, AND C ABOVE PURSUANT TO PARAGRAPH 17 OF THE INSTRUCTIONS TO BIDDERS, THEN PLEASE CIRCLE YES OR NO IN THE BOX. IF BIDDER FAILS TO CIRCLE YES FOR ANY REASON, THEN BIDDER'S ANSWERS MAY BE SUBJECT TO PUBLIC DISCLOSURE.

YES / NO

PART III

By executing this affidavit, the Bidder agrees to provide any additional information or documentation requested by the University (during the procurement process seeking clarification of the request for the Price-Matching Preference or after contract award to resolve any protest) to confirm the above certifications and statements within five (5) business days of request (including tax filings in North Carolina, banking statements, financial and accounting statements reflecting Bidder's payment of the subject taxes, and any other documentation that may establish Bidder's principal place of business in North Carolina, including but not limited to information regarding the amount of income and unemployment taxes paid to other states and number of employees in North Carolina and number of employees in other states). Pursuant to G.S. §§132-1.1, 105-259(b) and Paragraph 17 of the Instructions to Bidders, the University is prohibited from making public disclosures of the bidder's tax information and documents (except if one of the 39 exceptions applies in G.S. §105-259(b)) and the University shall preserve the confidentiality of the information and/or documents received in response to a request for clarification (or, as discussed below, to resolve a protest challenging resident bidder's qualification for the price-matching preference). In order to further preserve the confidentiality of bidder's tax information and documentation provided the University, the bidder shall comply with Paragraph 17 of the Instructions to Bidders and mark "CONFIDENTIAL" at the top and bottom of each page of the information and documentation. Bidder further understands and agrees that if Bidder fails to provide the University with the additional information and documentation within five (5) business days of the request; or the University determines that certifications or information in this Affidavit are false at any time after the contract is awarded to Bidder, the University may:

- (1) Cancel the Bidder's contract and/or purchase order that was awarded based on the price-matching preference and Bidder shall be liable for all its cost it incurs as a result of the cancellation and all increased costs of the University by awarding the contract to the next lowest bidder;
- (2) Bidder will not be entitled to any price-matching preference in any future University bidding opportunities;
- (3) Action may be taken against the bidder under the False Claims Act, G.S. §1-605 through 1-617, inclusive, for submitting a false Certification for the price-matching preference under Executive Order #50 (including but not limited to treble damages and civil penalties); and/or
- (4) Debar Bidder from doing business with the State of North Carolina for a period determined by the State Purchasing Officer and/or Board of Award.

The undersigned hereby certifies that he or she has read this certification and is an officer, member, partner, owner or such managing employee of the Bidder (the "Authorized Representative") that is authorized to execute this affidavit and to bind the Bidder to the certifications, statements and agreements herein.

Name of Authorized Representative: _____

Signature: _____

Title: _____

Date: _____

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public: _____

My commission expires _____