

CHARTER BUS SERVICE

NORTH CAROLINA STATE UNIVERSITY PURCHASING DEPARTMENT

GENERAL CONTRACT TERMS AND CONDITIONS

1. **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.
2. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of quote opening. Preference may be given to quotes allowing not less than 45 days for consideration and acceptance.
3. **TAXES:** No taxes shall be included in any bid prices.
 - a. **FEDERAL:** Generally, states and political subdivisions are exempt from such taxes, as excise and transportation. Exemption is claimed under Registry No. 56-70-0047K as provided by Chapter 32 of the Internal Revenue Code.
 - b. **OTHER:** Bid prices are not to include any sales, import, or personal property taxes. To the extent applicable, they are to be invoiced as a separate item(s).
4. **PRICE ADJUSTMENTS:** 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 contractor to other customers.
 - a. **NOTIFICATION:** Must be given to the University Purchasing Department, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturers' official notice or other 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 offered herein shall be firm against any increase for 180 days from effective date of the proposed 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 receipt and review by the University and State Purchase and Contract of a properly documented request for price increase. Any increases accepted shall become effective on a date to be determined by the University which:
 - 1) Shall not be later than 30 days after the expiration of the original 15 days reserved by the University to evaluate the request for increase; and
 - 2) Which date coincides with State Purchase and Contracts' next scheduled distribution of Contract Addenda to the various using agencies throughout the State. (These distributions occur approximately every three weeks.)
 - 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.
5. **PAYMENT TERMS:** Payment terms are Net, 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using department is responsible for all payments under the contract.
6. **CANCELLATION (Term Contracts Only) :** All contract obligations shall prevail for at least 180 days after 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.

Such notice of cancellation, as required herein, shall be transmitted VIA U.S. Mail, Certified, Return-Receipt Requested. The thirty day notice for cancellation shall begin on the day the return receipt is signed and dated.
7. **AFFIRMATIVE ACTION:** The successful bidder will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard to discrimination by reason of race, color, religion, sex, national origin, or physical handicap.
8. **CONDITION AND PACKAGING:** Unless otherwise indicated in the bid, it is understood and agreed that any item offered or shipped on this bid shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging.
9. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this University to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective.

We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use.

Companies are strongly urged to bring to the attention of the purchasers in the University Purchasing Department those products or packaging they offer which have recycled content and that are recyclable.

10. **PERFORMANCE BOND AND DEFAULT:** The University reserves the right to require performance bond from successful bidder, as provided by law, without expense to the University. Otherwise, in case of default by the Vendor, the University may procure the articles or services from other sources and hold the Vendor responsible for any excess cost occasioned thereby. Default shall occur if the Vendor fails to perform any obligation under the contract and schedule and such failure remains uncured for more than thirty (30) days after receipt of written notice thereof from the University.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

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

11. **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.

12. **SAMPLES:** Samples 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 opening of bids. Otherwise the samples will become University property. Each individual sample must be labeled with bidder's name and item number. Samples, on which an award is made, will be retained for the contract period. These will be returned, if requested, ten days prior to expiration of the contract.

13. **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 successful bidder will be held responsible therefor. Deviations must be explained in detail on an attached sheet(s). **The offeror shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**

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

Contractors 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. Contractor 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 contractors employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

15. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidders are to furnish all information requested and in the spaces provided on the bid form. Further, as may be specified elsewhere, each bidder must submit with his proposal: cuts, sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid does not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.

16. **PROMPT PAYMENT DISCOUNTS:** Offerors 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.

17. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance made of the lowest and best bid most advantageous to the University as determined upon consideration of such factors as: required insurance coverage; 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.

18. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the successful bidder to notify the University Purchasing Department at once, indicating in his letter 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.
19. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, North Carolina State 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.

20. **INSURANCE:**

COVERAGE - 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 and Employer's Liability** - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, to also include Employer's Liability coverage with minimum limits of \$500,000.00, covering all contractor's employees who are engaged in any work under the scope of this contract. If any work is subcontracted, the contractor 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** - Policy will include contractual coverage. Policy limits will be:
 \$1,000,000 Per Occurrence
 \$1,000,000 Aggregate
 \$1,000,000 Personal and Advertising Injury
- c. **Automobile** - Automobile Liability Insurance: Limits required will be \$5,000,000 per occurrence as required by the Federal Motor Carriers Act. Coverage will include the uninsured motorists/underinsured motorists coverage. North Carolina State University must be named as additional insured on the auto liability policy.

REQUIREMENTS: 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 of 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.

It is agreed that the coverage as stated shall not be canceled or changed until thirty (30) days after written notice of such termination or alteration has been sent by registered mail to the University Purchasing Department.

21. **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 tortious 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.
22. **PATENTS AND COPYRIGHTS:** The Contractor 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 patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.

Any and all copy, art, designs, negatives, photographs, or other tangible items created pursuant to contractor's performance of this project shall be the property of North Carolina State University ("NCSU"), and shall be delivered to NCSU upon completion of the project. Such property shall be transferred to NCSU in excellent, reusable condition.

In addition, the copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the contractor's performance of this project shall vest in NCSU, and the contractor agrees to assign all rights therein to NCSU. Contractor further agrees to provide NCSU with any and all reasonable assistance which NCSU may require to obtain copyright registrations or to perfect its title in any such work, including the execution of any documents submitted by NCSU.

23. **PATENT AND COPYRIGHT INDEMNITY:** VENDOR will defend or settle, at its own expense, any action brought against Customer to the extent that it is based on a claim that the product(s) provided pursuant to this agreement infringe any U.S. copyright or patent; and will pay those costs, damages and attorney's fees finally awarded against Customers in any such action attributable to any such claim, but such defense, settlements and payments are conditioned on the following (1) that VENDOR shall be notified promptly in writing by Customer of any such claim; (2) that VENDOR shall have sole control of the defense of any action on such claim and of all negotiations for its settlement or compromise; (3) that Customer shall cooperate with VENDOR in a reasonable way to facilitate the settlement of defense of such claim; (4) that such claim does not arise from Customer modifications not authorized by the VENDOR or from the use of combination of products provided by the VENDOR with products provided by the Customer or by others; and (5) should such product(s) become, or in the VENDOR's opinion likely to become, the subject of such claim of infringement, then Customer shall permit VENDOR, at VENDOR's option and expense, either

(a) to procure for Customer the right to continue using the product(s), or (b) replace or modify the same so that it becomes non-infringing and performs in a substantially similar manner to the original product; or (c) upon failure of (a) or (b) despite the reasonable efforts of the VENDOR for a sold product or licensed software, return the price paid for the licensed software and any product dependent thereon.

24. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the University as a part of any commercial advertising without prior approval of the University Purchasing Department.

25. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, price catalogs, and other documents as part of a Vendor's response will be waived and have no effect on this Request for Proposal or any other contract that may be awarded resulting from this solicitation. The submission of any other terms and conditions by a Vendor may be grounds for rejection of the Vendor's proposal. The Vendor specifically agrees to the conditions set forth in the above paragraph by affixing his name on the signatory page contained herein.

26. **CONFIDENTIAL INFORMATION:** Contractors 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.

Contractors 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.

27. **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 University Purchasing Department, solely as a convenience to the contractor, the University may:

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

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

28. **ACCESS TO PERSONS AND RECORDS:** The State or University 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.

29. **INSPECTION AT CONTRACTOR'S SITE:** The University reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor 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.

30. **AVAILABILITY OF FUNDS:** Any and all payments of compensation of this specific transaction, its continuing or any renewal or extension are dependent upon and subject to the allocation of appropriation of funds to the Agency for the purpose set forth in this agreement. (NCGS 143-34.2)

31. **SITUS:** The place of all contracts, transactions, agreements, their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

32. **GOVERNING LAWS:** All contracts, transactions, agreements, etc., are made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

33. **ADMINISTRATIVE CODE:** Bids, proposals, and awards are subject to applicable provisions of the North Carolina Administrative Code.

34. **EXECUTION:** Failure to sign under EXECUTION section will render quote invalid.

35. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this quote, the order of precedence shall be (1) special terms and conditions specific to this quote, (2) specifications, (3) University General Contract Terms and Conditions, and (4) University Quotation Terms and Conditions.

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

37. **PROTEST PROCEDURES:** A party wanting to protest a contract award pursuant to this solicitation must submit a written request to the University Purchasing Department at the address given above. 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. Offerors 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.

38. **YEAR 2000:** The software must perform fault-free in the processing of date and date related data (including, but not limited to, calculating, comparing, and sequencing) by all hardware, telecommunications, and software products delivered under this contract, individually and in combination, upon installation. Fault-free performance includes the manipulation of this data with dates prior to, through, and beyond January 1, 2000, and shall be transparent to the user.

Hardware, telecommunications, and software products, individually and in combination, shall successfully transition into the year 2000 with the correct date, without human intervention, including leap year calculations. Hardware and software products, individually and in combination, shall also provide correct results when moving forward or backward in time across the year 2000.

39. **DEBARMENT CERTIFICATION:** Offeror 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 offer 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 Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the University, the University may terminate this agreement for default.

Offeror hereby certifies these conditions and does so by signing the execution page of this quote document.

40. **PERSONAL IDENTIFIERS:** If the University provides the Contractor with personal identifiers as listed in North Carolina General Statute 131-1.10 or any other legally confidential information, Contractor 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 Contractor duties and responsibilities on behalf of the University. Contractor 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.

YOUR COMPANY NAME _____

REFERENCES

OFFERORS MUST LIST THREE (3) REFERENCES FOR WHOM THEY HAVE PERFORMED SIMILAR WORK DURING THE PAST THREE (3) YEARS.

(1) FIRM'S NAME _____

BUSINESS ADDRESS _____

MAILING ADDRESS _____

CONTACT PERSON _____

TELEPHONE # _____

(2) FIRM'S NAME _____

BUSINESS ADDRESS _____

MAILING ADDRESS _____

CONTACT PERSON _____

TELEPHONE # _____

(3) FIRM'S NAME _____

BUSINESS ADDRESS _____

MAILING ADDRESS _____

CONTACT PERSON _____

TELEPHONE # _____

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR QUOTATION.

EXECUTION OF QUOTATION

Date: _____

The potential Contractor certifies the following by placing an "X" in all blank spaces:

- _____ That this proposal was signed by an authorized representative of the firm.
- _____ That the potential Contractor has determined the cost and availability of all materials and supplies associated with performing the services outlined herein.
- _____ That all labor costs associated with this project have been determined, including all direct and indirect costs.
- _____ That, if required, the potential Contractor has attended the pre-quotation conference and is aware of the prevailing conditions associated with performing these services.
- _____ That the potential Contractor agrees to the conditions set forth in this **Request for Quotation** with no exceptions, and that the proposing vendor has made no changes to the original requirements or terms of the RFQ.
- _____ That the potential Contractor can obtain a performance bond, if required herein, and insurance as specified.
- _____ That the proposal is submitted competitively and without collusion, that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (N.C.G.S. §143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I Felony.

Therefore, in compliance with the foregoing Request for Quotation, and subject to all terms and conditions thereof, the undersigned offers and agrees, if this proposal is accepted within thirty (30) days from the date of the opening, to furnish the services for the prices quoted within ten (10) days of receipt of order.

CONTRACTOR _____ ADDRESS _____

CITY AND STATE _____ ZIP CODE _____ PHONE _____

BY _____ TITLE _____
(Signature)

TYPED OR PRINTED NAME FEDERAL IDENTIFICATION #

ACCEPTANCE OF QUOTATION (NC State Use Only) DATE: _____

AGENCY _____ CITY AND STATE _____

BY _____ TITLE _____
(Signature)

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS PART OF YOUR QUOTE.