STATE OF NORTH CAROLINA

Division of Purchase and Contract

Invitation for Bid #: 201901209

Durable Medical Equipment

Date Issued: December 5, 2019

Bid Opening Date: January 7, 2020

At 2:00 PM ET

Direct all inquiries concerning this IFB to:

Grant F. Braley
State Procurement Manager
Email: grant.braley@doa.nc.gov
Phone: (919) 807-4519

STATE OF NORTH CAROLINA
Division of Purchase and Contract

Refer *ALL* Inquiries regarding this IFB to: Grant F. Braley State Procurement Manager Email: grant.braley@doa.nc.gov Phone: (919) 807-4519	**Invitation for Bids # 201901209**
	Bids will be publicly opened: January 7, 2020
	Contract Type: Statewide Term Contract (STC 475B)
	Commodity No. & Description: 475-00 Hospital, Surgical & Related Medical Accessories
	Using Agency: * PURCHASE AND CONTRACT *****

EXECUTION

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

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

COMPLETE/FORMAL NAME OF VENDOR: Kalweit Services Inc. DBA MERCO Biomedical			
STREET ADDRESS: 1612 Virginia Beach Blvd, Suite 202		P.O. BOX:	ZIP:
CITY & STATE & ZIP: Virginia Beach, VA 23454		TELEPHONE NUMBER: 757-397-3251	TOLL FREE TEL. NO: 800-871-2547
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #11): 2530 Meridian Parkway, Suite 300, Durham, NC 27713			
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR: Krista Kalweit, President		FAX NUMBER: 757-399-2526	
VENDOR'S AUTHORIZED SIGNATURE: Krista Kalweit	**DATE:** 12/30/2019	E-MAIL: krista@mercobiomed.com	

Offer valid for at least 120 days from date of bid opening, unless otherwise stated here: _____ days. After this date, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this IFB.

ACCEPTANCE OF BID

If any or all parts of this bid are accepted by the State of North Carolina, an authorized representative of the Division of Purchase and Contract shall affix his/her signature hereto and this document and all provisions of this Invitation for Bid along with the Vendor bid response and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

FOR STATE USE ONLY: Offer accepted and Contract awarded this 21st day of April, 2020, as indicated on the attached certification, by _____ (Authorized Representative of the Division of Purchase and Contract).

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1.0 PURPOSE AND BACKGROUND

1.1 OVERVIEW

The State through the Department of Administration (DOA) Division of Purchase and Contract (P&C) is seeking Vendors for a Statewide Term Contract to supply the State's requirements for **Durable Medical Equipment** throughout the State of North Carolina. The intent of this Invitation for Bid (hereinafter, "IFB") is to receive pricing from Vendors that will offer a savings to the State and that confirm, through Vendors' submission of bids, an ability to meet the State's needs.

The contract resulting from this IFB is mandatory for State departments and most State Agencies, and by State higher education institutions (except for the North Carolina Department of Health and Human Services (DHHS), Division of Vocational Rehabilitation Services (DVRS) and under the conditions specified in G.S. 115D-58.14(a) and G.S. 116-13). The Contract may also be utilized, without further competition, by non-mandatory State Agencies and Other Eligible Entities. Bids shall be submitted in accordance with the terms and conditions of this IFB and any addenda issued hereto.

1.2 REGIONS

The State will be divided up into **fourteen (14) regions** to allow maximum coverage and lower delivery costs.

Region I: Camden, Currituck, Dare, Gates, Pasquotank, Perquimans, Bertie, Hertford, Northampton, Chowan, Hyde, Martin, Tyrrell, Washington

Region II: Beaufort, Pitt, Carteret, Craven, Pamlico, Greene, Jones, Lenoir

Region III: Onslow, Pender, Duplin, Sampson, Brunswick, New Hanover

Region IV: Edgecombe, Halifax, Nash, Wilson, Johnston, Wayne

Region V: Wake, Durham, Granville, Person, Franklin, Vance, Warren

Region VI: Robeson, Cumberland, Harnett, Bladen, Columbus

Region VII: Alamance, Orange, Guilford, Caswell, Rockingham

Region VIII: Chatham, Randolph, Hoke, Lee, Moore, Montgomery, Richmond, Scotland

Region IX: Davidson, Rowan, Davie, Forsyth, Stokes

Region X: Cabarrus, Stanly, Mecklenburg, Anson, Union

Region XI: Alleghany, Surry, Yadkin, Avery, Caldwell, Watauga, Ashe, Wilkes

Region XII: Alexander, Catawba, Cleveland, Gaston, Iredell, Lincoln

Region XIII: Burke, McDowell, Mitchell, Rutherford, Buncombe, Madison, Yancey

Region XIV: Henderson, Polk, Transylvania, Haywood, Jackson, Swain, Cherokee, Clay, Graham, Macon

2.0 GENERAL INFORMATION

2.1 INVITATION FOR BIDS DOCUMENT

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

2.2 E-PROCUREMENT SOLICITATION

ATTENTION: This is an E-Procurement solicitation. See paragraph #17 of ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS.

The Terms and Conditions made part of this solicitation contain language necessary for North Carolina's Statewide E-Procurement Services. It is the Vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By execution of its bid, Vendor agrees to and acknowledges acceptance of all terms and conditions, including those related to E-Procurement usage. General information on the E-Procurement Services can be found at: **http://eprocurement.nc.gov/**.

2.3 NOTICE TO VENDORS REGARDING IFB TERMS AND CONDITIONS

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

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this IFB (including proposed alternate language), those **must** be submitted as questions in accordance with the instructions in Section 2.5. BID QUESTIONS. If the State determines that any changes will be made resulting from the questions asked, then such decisions will be communicated in the form of an IFB addendum. The State may also elect to leave open the possibility for post-contract negotiation and amendment of specific provisions of the Contract that have been addressed during the question and answer period. Other than through this process, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's bid. This applies to any language appearing in or attached to the document as part of the Vendor's bid that purports to vary any terms and conditions or Vendors' instructions herein or to render the bid non-binding or subject to further negotiation. *Vendor's bid shall constitute a firm offer*. **By execution and delivery of a bid in response to this IFB, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposefully or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's bid as nonresponsive. Any bid that contains language that indicates the bid is non-binding or subject to further negotiation before a contractual document may be signed shall be rejected.**

2.4 IFB SCHEDULE

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

Event	Responsibility	Date and Time
Issue IFB	State	December 5, 2019
Submit Written Questions	Vendor	December 18, 2019– 5:00 PM ET
Provide Responses to Questions	State	December 20, 2019– 5:00 PM ET
Submit Bids	Vendor	January 7, 2020– 2:00 PM ET
Contract Award	State	January 17, 2020
Contract Effective Date	State	February 1, 2020

2.5 BID QUESTIONS

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

Written questions shall be e-mailed to **grant.braley@doa.nc.gov** by the date and time specified above. Vendors should enter **"IFB # 201901209: Questions"** as the subject for the email. Questions submittals should include a reference to the applicable IFB section and be submitted in a format shown below:

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

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

2.6 BID SUBMITTAL

IMPORTANT NOTE: This is an absolute requirement. Vendor shall bear the risk for late submission due to unintended or unanticipated delay—whether submitted electronically, delivered by hand, US Postal Service, courier or other delivery service. It is the Vendor's sole responsibility to ensure its bid has been submitted to this Office by the specified time and date of opening. The date and time of submission will be marked on each bid when received, and any bid received after the bid submission deadline will be rejected. Sealed bids, subject to the conditions made a part hereof, will be received at the address indicated in the table in this Section, for furnishing and delivering the commodity or service as described herein.

If applicable to this IFB, sealed bids, subject to the conditions made a part hereof and the submission requirements described below, shall be delivered to the physical address indicated in the table below, for furnishing and delivering those items or Services as described herein. Vendors shall deliver to the address identified in the table above: one **(1) paper** and one **(1) electronic copy** (un-redacted) of its executed bid on CD, DVD or flash drive, and, if required for confidentiality, one (1) redacted copy of your bid (with all marked proprietary and confidential Information Redacted) on a separate CD, DVD or flash drive. Clearly mark on the electronic media whether it contains a redacted or unredacted copy.

All bids shall be submitted in a sealed envelope. Clearly mark each package with: (1) Vendor name; (2) the IFB number; and (3) the due date. Address the package(s) for delivery as shown in the table, above. File contents **shall NOT** be password-protected but, shall be in .PDF or XLS format, and shall be capable of being copied to other sources. Bids shall be marked on the outside of the sealed envelope with the Vendor's name, IFB number and date and time of opening. If Vendor is submitting more than one bid, each bid shall be submitted in separate sealed envelope and marked accordingly. For delivery purposes, separate sealed bids from a single Vendor may be included in the same outer package. Do not include bids for more than one solicitation in the same package.

MAILING ADDRESS FOR DELIVERY OF BID VIA US POSTAL SERVICE	OFFICE ADDRESS FOR DELIVERY BY ANY OTHER MEANS, SPECIAL DELIVERY, HAND DELIVERY, OVERNIGHT DELIVERY OR BY ANY OTHER CARRIER
BID NO. 201901209 *NC DEPARTMENT OF ADMINISTRATION* *DIVISION OF PURCHASE AND CONTRACT* *ATTN: GRANT F. BRALEY* *1305 MAIL SERVICE CENTER* *RALEIGH NC 27699-1305*	*BID NO. 201901209* *NC DEPARTMENT OF ADMINISTRATION* *DIVISION OF PURCHASE AND CONTRACT* *ATTN: GRANT F. BRALEY* *116 WEST JONES STREET Room 4062 4th Floor* *RALEIGH NC 27603-8002*

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

2.7 ALTERNATE BIDS

Vendor may submit alternate bids for various methods or levels of service(s) or that propose different options, in addition to its principal bid. Alternate bids must specifically identify the IFB requirements and advantage(s) addressed by the alternate bid. Any alternate bid, in addition to the marking described above, must be clearly marked with the legend: **"Alternate Bid # 201901209 for (*name of Vendor*)".** Each bid must be for a specific set of goods and must include specific pricing. If a Vendor chooses to respond with various offerings, each must be offered with a separate price and be contained in a separate bid document. Each bid must be complete and independent of other bids offered.

2.8 BID CONTENTS

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

a) Title Page: Include the complete company name, address, phone number and authorized representative along with the IFB Number.
b) Completed and signed version of EXECUTION PAGE, along with the body of the IFB, and signed receipt pages of any addenda released in conjunction with this IFB (if required to be returned).
c) Completed version of ATTACHMENT A: PRICING SUBMITTAL WORKBOOK
d) ATTACHMENT B: INSTRUCTIONS TO VENDORS
e) ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS
f) Completed version of ATTACHMENT D: SUPPLEMENTAL VENDOR INFORMATION
g) Completed version of ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR
h) Completed and signed version of ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION
i) Completed and signed version of ATTACHMENT G: SUPPLIER INFORMATION

2.9 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

a. **BAFO**: Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency.
b. **BIDDER:** Company, firm, corporation, partnership, individual, etc., submitting a response to an Invitation for Bids.
c. **BUYER:** The employee of the State or Other Eligible Entity that places an order with the Vendor.
d. **COMMUNITY COLLEGE:** Any of the fifty-eight (58) public North Carolina Community Colleges.
e. **CONTRACT LEAD:** Representative of the Division of Purchase and Contract identified on the first page of this IFB who will correspond with potential Vendors concerning solicitation issues and will contract with the Vendor providing the best offer to the State, and is the individual who will administer The Contract for the State.
f. **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.
g. **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns commodity in transit and files any claims, and Vendor pays all freight and any related transportation charges. A solicitation may request a Vendor to separately identify freight charges in its bid, but no amount or charge not included as part of the total bid price will be paid.
h. **IFB:** Invitation for Bids.
i. **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
j. **OTHER ELIGIBLE ENTITIES:** Entities, other than State Agencies, that are authorized to participate in and purchase from a Statewide Term Contract by complying with State rules and procedures and the terms and conditions set forth in the Contract resulting from this solicitation, including Non-profit corporations operating charitable hospitals; Local non-profit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services; Private non-profit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities; Private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development; Public and Private higher education institutions; Counties, cities, towns, and other local governmental entities; Public school units; Volunteer fire departments, rescue squads.
k. **QUALIFIED BID:** A responsive bid submitted by a responsible Vendor.
l. **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
m. **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institutions.

n. **STATE DEPARTMENTS:** Department of Administration, Department of Agriculture and Consumer Services, Department of Commerce, Department of Cultural and Natural Resources, Department of Environmental Quality, Department of Health and Human Services, Department of Information Technology, Department of Insurance, Department of Justice, Department of Labor, Department of Military and Veteran Affairs, Department of Public Instruction, Department of Public Safety, Department of Revenue, Department of State Treasurer, Department of the Secretary of State, Department of Transportation, Wildlife Resources Commission, Office of Budget and Management, Office of the Governor, Office of the Lieutenant Governor, Office of the State Auditor, Office of the State Controller.

o. **STATEWIDE TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities needed across the state for use by multiple entities.

p. **THE CONTRACT:** A contract resulting from or arising out of Vendor responses to this solicitation document.

q. **VENDOR:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to an Invitation for Bids. Following award of a contract, the term refers to an entity receiving such an award.

3.0 METHOD OF AWARD AND BID EVALUATION PROCESS

3.1 METHOD OF AWARD

Contracts will be awarded on the basis of merit and qualifications and in accordance with G.S. 143-52 and the evaluation criteria set out in this solicitation. Prospective Vendors shall not be discriminated against on the basis of race, color, national origin, ethnicity, age, disability, sex, pregnancy, religion, National Guard or veteran status, sexual orientation, or gender identity or expression.

While the intent of this IFB is to award a Contract to multiple Vendor(s) per category and by region, the State reserves the right to make separate awards to different Vendors for one or more line items, to not award any portion of the goods or services or to cancel this IFB in its entirety without awarding a contract, if it is considered to be most advantageous to the State to do so. **A Vendor may bid on one (1) or more regions. Vendor may bid on one (1) or more Product Categories/Manufacturers but MUST provide all items within each category.**

The status of a Vendor's E-Procurement Services account(s) shall be considered a relevant factor in determining whether to approve the award of a contract under this IFB. Any Vendor with an E-Procurement Services account that is in arrears by 91 days or more at the time of bid opening may, at the State's discretion, be disqualified from further evaluation or consideration. The State reserves the right to waive any minor informality or technicality in bids received.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

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

3.3 BID EVALUATION PROCESS

The State shall review all Vendor responses to this IFB to confirm that each one complies with the specifications and requirements of the IFB. Bids are requested for the items as specified, or item(s) equivalent in design, function and performance. The State reserves the right to reject any bid on the basis of fit, form and function as well as cost. All information furnished on this bid may be used as a factor in determining the award of this contract.

The State will conduct an evaluation of Bids, as follows:

a) Bids will be received from each responsive Vendor in a sealed envelope or package.

b) All bids shall be received by the issuing agency not later than the date and time specified on the cover sheet of this IFB, or as modified by a bid addendum.

c) At the date and time specified as the bid opening, the package containing the bids from each responding Vendor will be opened publicly and the name of the Vendor and bid's total cost will be announced. Interested parties are cautioned that these costs and its components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position.

d) At its option, the State may request clarifications, oral presentations or discussion with any or all Vendors in order to clarify or to amplify the materials presented in any part of the bid or requested in the IFB. Vendors are cautioned, however, that the State is not required to request presentations or other clarification—and often does not. Therefore, all bids should be complete and reflect the most favorable terms available from the Vendor. Prices bid cannot be altered or modified as part of a clarification.

e) Bids will generally be evaluated, based on completeness, content, cost and responsibility of the Vendor to supply the requested goods and services. Any specific evaluation criteria are listed in Section 3.1 METHOD OF AWARD.

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

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

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

3.4 PERFORMANCE OUTSIDE THE UNITED STATES

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

a) Total cost to the State

b) Level of quality provided by the Vendor

c) Process and performance capability across multiple jurisdictions

d) Protection of the State's information and intellectual property

e) Availability of pertinent skills

f) Ability to understand the State's business requirements and internal operational culture

g) Particular risk factors such as the security of the State's information technology

h) Relations with citizens and employees

i) Contract enforcement jurisdictional issues

3.5 INTERPRETATION OF TERMS AND PHRASES

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

4.0 REQUIREMENTS

This Section lists the requirements related to this IFB. By submitting a bid, the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this IFB. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better bid, the Vendor is urged and cautioned to submit these items in the form of a question during the question and answer period in accordance with Section 2.5.

4.1 CONTRACT TERM

The Contract shall have an initial term of **three (3) years**, beginning on the date the Contract is executed by the State (the "Effective Date"). At the end of the Contract's current term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for **up to a total of two (2) additional one-year terms**. The State will give the Vendor written notice of its intent whether to exercise each option no later than **90 days** before the end of the Contract's then-current term. In addition, the State reserves the right to extend a contract term for a period of up to 180 days in 90-day-or-less increments.

4.2 CONTRACT VALUE & QUANTITIES

The total potential purchases under this Contract by mandatory and non-mandatory entities are not currently available for the initial three-year Contract term. No maximum or minimum quantities are guaranteed. The State shall not be obligated to purchase in excess of its normal requirements.

4.3 PRICING

Bid price shall constitute the total cost to the State for delivery fully assembled and ready for use, including all applicable charges for shipping, delivery, handling, administrative and other similar fees. Vendor shall not invoice for any amounts not specifically allowed for in this IFB. Complete ATTACHMENT A: PRICING SUBMITTAL WORKBOOK and include in Bid.

For Stair Lifts, Ceiling Lifts, Porch/Platform Lifts and Door Openers (auto door strikes, etc.), contract bid price includes standard delivery and standard installation. Any extraneous home modifications or site-preparations associated with equipment installation that go beyond a "standard installation" will be quoted separately per usual and customary charges for labor and materials. These additional installation costs must be approved per the authorizing case manager according to the terms and conditions and engineering specifications that are associated with the particular needs of the project. The State reserves the right to bid outside the contract for site preparations that are required beyond the "standard installation" if scope of work warrants and is deemed advantageous.

4.4 DESCRIPTIVE LITERATURE AND PRICE LISTS

Each Vendor **shall** submit with the bid the manufacturer's price list(s) which cover all models and/or styles offered herein. Altered, or unpublished, price lists may subject your bid to rejection. Vendors are hereby advised that literature, questionnaires, and other data submitted in response to a previous IFB will not suffice for the above requirement nor for any other herein for information. After award, and upon request by the Agency, the awarded Vendor(s) shall furnish price lists, catalogs, and descriptive literature to the Agency, as needed.

Bid prices will be based on a percentage discount off the current manufacturer's suggested retail price list (MSRP). Vendor shall provide a single discount for each category, as follows: (a) a single discount for all powered wheelchairs and accessories, (b) a single discount for all manual wheelchairs, patient wheeled chairs, shower chairs and accessories, (c) a single discount for replacement parts, (d) a single discount for scooters, (e) a single discount for seating and positioning products and accessories, (f) a single discount for stair lifts and accessories, (g) a single discount for porch/platform lifts, (h) a single discount for ceiling lifts and accessories, (i) a single discount for hospital beds and accessories, (j) a single discount for mattresses (see pricing information section for specific detail). All discounts offered in response to this IFB shall be applied to these MSRPs.

The Manufacturers' Price Lists that are listed on this bid will be the only approved, dated price lists that will be used to price the products for this contract. Any price list changes will be made by amendment to the awarded contract and updated. Any unapproved price lists or prices charged by the Vendor will result in refunds to the State and may also result in Vendor's removal from the contract.

4.5 TRANSPORTATION AND IDENTIFICATION

The Vendor shall deliver **Free-On-Board (FOB) Destination** to any requested location within the State of North Carolina with all transportation costs included in the total bid price. **Any usual and customary charges, such as out-of-state or external freight charges that may be applicable for any items listed in this contract should be incorporated into the final bid price.** Freight forwarding charges or inbound shipping charges incurred by a vendor from manufacturers are not applicable and cannot be passed on to the Agency.

In instances where the Vendor makes partial shipments of an order to one destination which is equal to, or greater than, the minimum order, all shipments of the order shall be sent FOB DESTINATION with NO additional transportation charges. A complete packing list shall accompany each shipment. Vendors shall not ship any products until they have received an order.

4.6 DELIVERY & INSTALLATION

Successful Vendor(s) must complete delivery within fourteen (14) consecutive calendar days for standard products and within thirty (30) consecutive calendar days for custom orders. See below for definitions and additional delivery details.

4.6.1 DELIVERY FOR STANDARD PRODUCTS

Complete delivery within 14 consecutive calendar days after receipt of purchase order. STANDARD PRODUCTS are defined as off the shelf products and accessories that require no custom modifications. For example: a standard wheelchair with available accessories that can be shipped with the chair.

Standard Delivery will be made from Virginia Beach, VA, Durham, NC (city, state) within 10 consecutive calendar days after receipt of purchase order. Promptness of delivery shall be used as a factor in the award criteria. If delivery will be made from multiple locations, please provide details (location, days, manufacturer, etc.) on a separate page.

4.6.2 DELIVERY FOR CUSTOM ORDERS

Complete delivery within 30 consecutive calendar days after receipt of purchase order. CUSTOM ORDERS are defined as products or accessories that require custom modifications. For example: To build a custom wheelchair that has features or accessories to accommodate a client with special height, length and width requirements such as (custom back height, seat width, head and leg supports, molded cushions).

Custom Delivery will be made from N/A (city, state) within _____ consecutive calendar days after receipt of purchase order. Promptness of delivery shall be used as a factor in the award criteria. If delivery will be made from multiple locations, please provide details (location, days, manufacturer, etc.) on a separate page, and label it "4.6 Delivery Response Continued". NO additional upcharges are to be submitted to the Agency for Custom Delivery.

4.6.3 STANDARD INSTALLATION

Standard installation is to be FREE and included for all items except as noted in CUSTOM INSTALLATION. Equipment is delivered already assembled, set-up and/or secured in place and is ready to operate with no additional modifications to the equipment itself or the site.

4.6.4 CUSTOM INSTALLATION

This is only applicable to the installation for Lift Systems (Porch/Platform Lifts, Stair Lifts, Ceiling Lifts) and Door Openers. It is recognized that additional site prep work may be necessary for turnkey and successful installation of these items. Additional USUAL AND CUSTOMARY CHARGES related to an installation are to be quoted beforehand to the local office, approved by the authorizing case manager and billed separately on the final invoice.

Vendors are cautioned that excessively long delivery schedules, as determined by this Division, may be cause for non-award. The state expects that the delivery schedule offered herein to be firm and fully expects compliance with the stated delivery schedule. Failure of the Vendor to meet contracted delivery schedules shall constitute cause for removal from the contract.

Delivery shall not be considered to have occurred until installation set-up has been completed. Upon completion of the installation, the Vendor shall remove and properly dispose of all waste and debris from the installation site. The Vendor shall be responsible for leaving the installation area clean and ready to use.

In the event the delivery is not received within the contract delivery period, the Vendor may be held in default in accordance with ATTACHMENT C, DEFAULT AND PERFORMANCE BOND, in the North Carolina General Contract Terms and Conditions, and the State may procure the articles or services from other sources and hold the Vendor responsible for any excess cost occasioned thereby.

If circumstances beyond the control of the Vendor result in a late delivery, it is the responsibility and obligation of the Vendor to make the details known immediately to the Contract Specialist.

4.7 IDENTIFICATION

The purchase order number, when an order is placed using a purchase order, shall be shown on all shipping manifests to ensure proper identification and payment of invoices. If an order is placed without using a purchase order, such as via phone, the Buyer's name shall be show on all shipping manifests. Vendors shall not ship any products until they have received an order.

4.8 WARRANTY

Manufacturer's standard warranty shall apply. Vendors shall include a copy of the manufacturer's standard warranty with the bid response.

Vendor warrants that all equipment furnished under this IFB will be newly manufactured, of good material and workmanship and agrees to replace defective items within ten (10) calendar days of notification by the Agency. Replacements, adjustments a corrective measures are to be at no charge to the State. The warranty will be for a minimum period of twelve (12) months from date equipment is put into operation or the length of the manufacturer's warranty, whichever is longer. Such warranty shall cover the cost of all defective parts replacement, labor, freight, and technicians' travel at no additional cost to the State. To the extent not superseded by the terms of this paragraph, manufacturer's warranty terms shall apply.

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

Is the Vendor authorized by manufacturer to repair equipment offered during the warranty period? ☑ Yes ☐ No

Will the Vendor provide warranty service? ☑ Yes ☐ No, a manufacturer-authorized third party will perform warranty service.

Contact information for warranty service provider:

Company Name: MERCO Biomedical

Company Address: 1612 Virginia Beach Blvd, Suite 202
Virginia Beach, VA 23454

Contact Person (name): Janice Jones

Contact Person (phone number): 800-871-2547 ext 2003

Contact Person (email): service@mercobiomed.com

4.9 MAINTENANCE OPTION

Following expiration of the above warranty, Vendor, or third-party service provider listed above, must abide by the following servicing terms regarding post warranty work:

SERVICE CHARGES FOR OUT OF WARRANTY EQUIPMENT and/or GENERAL SERVICING/MAINTENANCE
$ 130.00 Per Labor/Hour at Vendor or Dealer Facility
$ 120.00 Per Labor/Hour for any technician travel (on-the-road time and not providing a service)
$ 135.00 Per Labor/Hour Onsite at Client's / End User's Location
Mileage noted separately on the invoice: Current Standard IRS rate at the time of service.

4.10 REFERENCES

The State reserves the right to require, upon its request, a list of users of the exact items being provided to the State. The State may contact the references.

4.11 QUALITY ACCEPTANCE INSPECTION

It is the responsibility of the receiving agency to inspect all materials, supplies and equipment upon delivery to ensure compliance with the contract requirements and specifications.

INVOICES MAY NOT BE PAID BY THE USING AGENCY UNTIL AN INSPECTION HAS OCCURRED, AND THE GOODS ACCEPTED.

4.12 AUTHORIZED RESELLER

The Vendor shall be authorized by the manufacturer to distribute or resell the products and/or maintenance offered in this IFB. The Vendor shall provide with its bid response a signed statement from the manufacturer confirming authorization. Failure to provide this statement shall constitute sufficient grounds for rejection of Vendor's offer, at the discretion of the State.

Vendor is the: ☐ **Manufacturer** ☑ **Dealer** ☐ **Reseller** ☑ **Distributor**

Authorized: ☑ **Yes** ☐ **No** **Attached Manufacturer's Authority:** ☐ **Yes** ☐ **No**

4.13 FINANCIAL STABILITY

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

5.0 PRODUCT SPECIFICATIONS

5.1 GENERAL SPECIFICATIONS

Manufacturer(s) name and product descriptions used in this solicitation are product specific. The items offered in response to this solicitation shall be the manufacturer and type specified. These specific products are needed due to compatibility and continuity of support. Failure to comply with this requirement shall be a sufficient basis for disqualifying a bid from further consideration.

5.2 APPLICABLE STANDARDS

The manufacturer's products bid to the state and delivered under this contract shall be in compliance with, but not limited to, the standards and guidelines of the following organizations:

a) American National Standards Institute/RESNA. Wheelchair standards: part 00 - nomenclature terms and definitions. ANSI/RESNA WCOO.

b) American Academy of Pediatrics. School bus transportation of children with special needs [policy statement]. Committee on Injury and Poison Prevention. RE9401. *Pediatrics* 1994 Jan;93(I):129-30.

c) Canadian Standards Association. Wheelchairs - nomenclature, terms, and definitions [standard]. CAN/CSA-Z323.4.1-86. 1986.

d) Office of Technology Assessment. Market for wheelchairs: innovations and federal policy. NTIS PB85-145944.1984.

e) RESNA (Rehabilitation Engineering Society of North America)/ANSI. Wheelchair standards: part 00 nomenclature terms and definitions

5.3 SERVICES

Service shall include but will not be limited to: Assembly, repair and modifications to wheelchairs, 3-4 wheel scooters and mobility devices, adaptive equipment, lift chairs, stair lifts, ceiling lifts, porch lifts, patient lifts, hospital beds and accessories. Adequate and satisfactory availability of repair parts and supplies, and ability to meet service requirements are necessary. The State reserves the right to satisfy itself by inquiry or otherwise as to Vendor's capabilities in this regard.

a) Coordination between the Agencies and the Vendor(s) are essential for the success of this contract. Vendor shall provide high quality service in a timely manner, and failure to do so, as determined by The Division of Purchase & Contract, may result in the termination of the contract.

b) The Vendor shall be a factory authorized dealer and authorized to repair, service and sale the manufacturers' brands of equipment that were awarded through this contract. The Vendor shall furnish a manufacturer's letter of support as an authorized dealer, if requested by the agency.

c) Once the Vendor receives notification by the end user or agency representative, the Vendor shall respond within 48 hours with a plan of action and or scheduled date to address the repair issue at the end user's site, if necessary.

d) The warranted repair work shall be completed within 3-7 calendar days from the end user's service request. The repair provider in such a service request shall not void the manufacturer's warranty in any way. Vendor shall provide the end user with a written estimate of the time to complete repair work.

e) Repairs to equipment still under warranty are not reimbursable under the contract and will included parts, labor, and travel. If the equipment cannot be repaired within 3-7 calendar days after notification, similar or exact equipment must be provided to the client until original equipment can be repaired. **For wheelchairs and scooters, the Vendor must provide a suitable comparable loaner that will temporarily accommodate the disabilities. The agency's authorizing case manager must approve the loaner as suitable for the client / end user.**

f) Warranty work is to be completed at no cost and billable hours cannot exceed 48 hours over a period of 3-7 days.

5.4 VENDOR REPAIR SERVICES

a) The Vendor shall respond via telephone to an end user's repair request(s) **within 48 hours** from the time that the end user has called in a repair request. The Vendor shall respond within this time frame with a plan of action and or scheduled date to address the repair issue at the end user's site, if necessary.

b) The warranted repair work shall be completed within 3-7 calendar days from the end user's service request. Vendor shall provide the end user with a written estimate of the time to complete repair work. The repairs provided in such a service request shall not void the manufacturer's warranty in any way.

c) When the repair period exceeds the 7 days allowance the Vendor will provide a suitable loaner equipment that will temporarily accommodate the client's disabilities. The agency's representative will approve the loaner as suitable for the client.

5.5 WHEELCHAIR SERVICE/CONSULTATION

a) Consultation:

Consultations shall include but not be limited to: Client seating assessment, fittings and evaluations. Seating assessments may be for a new system or for modifications to a current wheelchair. Vendors will work with the agency personnel to perform a thorough seating assessment for the clients and to make recommendations for the most cost-effective options to meet the needs of each client.

b) Evaluation Team Participation:

- As required by each agency making use of this contract. A thorough seating assessment to be completed on each client by an evaluation team consisting of the Vendor, a Physical and /or Occupational Therapist, an Adaptive Equipment Specialist (may be the Vendor or Vendor's representative, if applicable), and a direct care representative from the agency sponsoring the purchase of the equipment. The evaluation team will provide a written recommendation for the most cost-effective options (as agreed upon by the end user) for meeting the disability and medically related goals/objectives specified as a result of the evaluation. Each recommendation will be reviewed by the PT/OT Director and/or the direct care representative from the sponsoring agency for approval prior to purchase of the equipment. The evaluation shall not be conducted solely by the Vendor.
- Vendor shall be required to have on staff, an ATS (Assistive Technology Supplier), RESNA certified Assistive Technology Specialist, or ATP (Assistive Technology Provider). The ATS/ATP must perform each evaluation and delivery of products provided, in any part, under the contract. The vendor may sub-contract with a seating clinic for the ATS/ATP service. The signature of the participating professional is required for each of the two visits.
- Fittings shall be performed, and deliveries made as deemed appropriate by the using agencies. Vendor shall comply with all policies and procedures of the using agency related to providing products and services under this contract, including invoice and payment requirements.
- The Vendor shall provide custom molded seating should it be called for and pressure mapping. This may be sub-contracted, as long as ATS/ATP participates in the process.
- The Vendor shall have a full-time Maintenance Technician that is qualified to work on all equipment bid and will maintain common repair parts in stock.
- The number of seating assessments/evaluations may vary per agency and per visit. More clients may be seen per visit if evaluations are not for entire new systems, but rather for modification to current wheelchairs. As new systems come in, the number of evaluations may decrease to allow time for fittings and delivery of new equipment.

5.6 DEVIATIONS

The nature of all deviations from the Specifications and Requirements listed herein shall be clearly described by the Vendor. Otherwise, it will be considered that items offered by the Vendor are in strict compliance with the Specifications and Requirements, and the successful Vendor shall be held responsible to supply conforming goods. Deviations shall be explained in detail below or on an attached sheet. However, no implication is made or intended by the State that any deviation will be acceptable. Do not list objections to the General Contract Terms and Conditions in this section.

MERCO Biomedical will not provide custom products, only standard order. Pressure mapping and an ATS/ATP will not be needed.

5.7 VENDOR'S REPRESENTATIONS

a) Vendor warrants that qualified personnel shall provide all services that may be required under the Contract in a professional manner. "Professional manner" means the personnel performing the services shall possess the skill and competence consistent with at least the prevailing business standards in the industry. Vendor agrees that it shall not enter any agreement with a third party that may abridge any rights of the State under The Contract. Vendor shall serve as the prime contractor under the Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder.

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

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

6.0 CONTRACT ADMINISTRATION

6.1 ACCOUNT MANAGER AND CUSTOMER SERVICE

The Vendor shall designate and make available to the State an account manager(s). The account manager shall be the State's point of contact for contract related issues and other matters which need to be escalated above customer service representatives. The account manager shall be available 8:00 AM to 6:00 PM ET on State business days. If the account manager is out of the office, for any reason, the account manager shall designate an alternate point of contact.

The Vendor shall establish unique customer identification numbers for use by each individual Ordering Entity. Some Ordering Entities may require multiple customer identification numbers. Describe project start-up or the ramp up process that would be necessary if your company was awarded the contract.

6.2 DISPUTE RESOLUTION

The parties agree that it is in its mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the State's Contract Lead for resolution. A claim by the State shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the period the Parties are attempting to resolve any dispute, each shall proceed diligently to perform its respective duties and responsibilities under The Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under The Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.3 ORDER CHANNEL AND PAYMENT METHOD

The State expects the vast majority of orders to be submitted electronically through the State's E-Procurement System. However, the State recognizes that orders may be placed at times through alternate channels such as by phone, through email, or in person and that orders may also utilize at times a procurement card (State credit card) as a method of payment. Regardless of the order channel or payment method, the State shall receive contract pricing when purchasing contract items from the Vendor.

In order to be considered for award, the Vendor must accept Procurement/Purchasing Cards, if it accepts credit cards as a payment method from other customers.

It is understood and agreed that orders will be shipped at the established contract price in effect on **date orders are delivered**. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoicing at variance with this provision will subject the contract to cancellation.

Invoices must include detailed line item information to allow Buyer to verify pricing at point of receipt matches the correct price from the original date of order. At a minimum, the following fields must be included on all invoices.

- Vendor's Billing Address, Customer Account Number, NC Contract Number, Order Date, Buyers Order Number, Manufacturer Part Numbers, Vendor Part Numbers, Item Descriptions, Price, Quantity, and Unit of Measure.

At a Buyer's request, the Vendor shall provide Consolidated Invoicing. A Buyer may request the Consolidated Invoice including a summary of orders in addition to detailed line item information. Consolidated Invoices are to be provided on a cycle and format determined by the Authorized User. In addition to the fields listed above for a standard invoice, Consolidated Invoices are required to include the following data elements:

- Order Dates for Each Order, Agency's Order Number for Each Order, and Extended Costs Separated by Order Dates.

If a Vendor offers a discount for prompt payment, the Vendor shall include the terms of the discount on all invoices, the amounts which are due if the Buyer meets the terms, and the date for which the prompt payment discount(s) expire.

6.4 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost the State. A continuous improvement effort consisting of various ideas to enhance business efficiencies will be discussed at the periodic Business Review Meetings.

6.5 HAZARDOUS SUBSTANCE AND/OR OIL SPILLS

Vendors hired by the end user shall be responsible for any costs (direct or indirect) associated with damage and/or cleanup of a hazardous substance and/or oil spill caused by the Vendor or their agent. This responsibility shall extend to freight carriers who were hired by the Vendor to deliver the commodity or service to the end user. While on end user premises, the Vendor shall comply with all local, State and Federal requirement for the proper handling of hazardous substances and/or oil.

For the purpose of this section, hazardous substances shall be defined as any substance, other than oil, which when discharged in any quantity may present an imminent and substantial danger to the public health, welfare AND/OR environment. Oil shall be defined as any oil of any kind and in any form, including but specifically not limited to petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances. In addition, the Vendor agrees to indemnify and hold the end user harmless against all claims, liabilities and costs, including attorney's fees, incurred in the defense of any claim brought against the end user resulting from such as spill.

6.6 QUARTERLY REPORTS

The Vendor shall provide Quarterly Management Reports to the designated Contract Lead and other ad hoc reports to the designated Contract Lead and/or Buyers. The Quarterly Management Report shall include, at a minimum, information on: items purchased, manufacturer product description, purchased quantities, List Price, price paid, manufacturer name, unit of measure, any additional delivery charges such as specialty packaging or overnight delivery, ordering entity, delivery location, order date, and shipment date for consumables and delivery date for non-routine consumables and submitted to the following e-mail address (**PCReports@doa.nc.gov**) and copy the Contract Specialist. Vendor shall include all issues identified by the Vendor related to Vendor performance or to the State's usage of the Contract.

Each report shall be well organized and easy to read. The Vendor shall submit these reports electronically using Microsoft Excel and, as needed, either Microsoft PowerPoint or Word. Vendor shall submit the Quarterly Management Reports by the 15th of the month following the end of the quarter. The Quarterly Management Report delivery schedule is included below:

- **By October 15th**: Q1 Quarterly Management Report for July – September
- **By January 15th:** Q2 Quarterly Management Report for October – December
- **By April 15th:** Q3 Quarterly Management Report for January – March
- **By July 15th:** Q4 Quarterly Management Report for April – June.

This schedule aligns with the State's fiscal year. If the Contract start date does not align with the start of a quarter, the initial Quarterly Management Report shall be for the period from the Contract start date to the end of the initial quarter. Timely submission of all reports shall be a material term of this contract and failure to do so shall constitute a default. Additional related sales information and/or details on user purchases may be required by the State and must be supplied within 30 days upon request. A template for any such report may be provided by the State at its discretion.

6.7 SALES PROMOTIONS

Vendor may conduct sales promotions involving price reductions for a term shorter than the contract term. A Vendor shall submit to the Contract Manager documentation related to the sales promotion which contains the following: (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to current contract prices. Promotional prices shall be available to all users. Upon approval of the sales promotions by the Contract Manager, the Vendor may offer the sales promotion to the State.

6.8 PERIODIC MANAGEMENT REVIEW MEETINGS

The Vendor, at the request of the State, shall meet periodically with the State for Management Review meetings. The purpose of these meetings will be to review the quarterly management reports, discuss Vendor performance, address issues, review sales data, review continuous improvement ideas, and discuss any other pertinent topics. These meetings will occur at a time and place approved by the State.

6.9 PRODUCT RECALL

Vendor expressly assumes full responsibility for prompt notification to the Buyer listed on the face of this IFB of any product recall in accordance with the applicable state or federal regulations. The Vendor shall support the State, as necessary, to promptly replace any such products, at no cost to the State.

6.10 POST AWARD PRODUCT SUBSTITUTIONS, ADDITIONS & REMOVALS

Post award product substitutions are not permitted without prior written approval from the Contract Specialist. Proposed substitutions shall be at the same or higher quality and at the same or lower price as the original item. Failure of the Vendor to comply with this requirement shall constitute sufficient cause to hold the Vendor in default or for removal from the contract.

The items included in this IFB are expected to cover the State's needs for the term of the contract. In the case that the State's needs change over the term of the contract, the State reserves the right to add additional products to the contract that can be supplied by the awarded Vendor. The price for these added products will be mutually agreed to by the State and the Vendor, but are assumed to be priced at a discount similar to what is being offered on the products listed in the IFB.

6.11 CONTRACT CHANGES

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

6.12 PRICE ADJUSTMENTS

Prices bid by the Vendor shall be held constant for a period of **180 days after contract award**.

After this period, price increase requests shall be submitted in writing to the Contract Lead, which shall include the reason(s) for the request and contain supporting documentation of the need. If supplier price increase is the basis for the request, the supplier's new price list must be included in the documentation. Price increases will be negotiated and agreed to by both the State and Vendor in advance of any price increase going into effect. The State is not obligated to accept pricing adjustments or increases and reserves the right to accept or reject them in part or in whole. Price de-escalation or decreases may be requested by the State at any time.

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.

6.13 TAXES

No taxes shall be included in any bid prices.

Attachments to this IFB begin on the next page.

ATTACHMENT A: PRICING SUBMITTAL WORKBOOK

Bid prices shall be based on a percentage discount off the current manufacturer's suggested retail price list (MSRP). For example, a single discount for power wheelchairs, a single discount for all manual wheelchairs and shower chairs, a single discount for scooters and a single discount for seating & positioning products, etc. A space has been provided for a single discount under each category heading for each manufacturer's product lines. The Vendor shall enter the region(s) it plans to submit a response, i.e. **Vendor A submits a bid for 21st Century Scientific for Regions I, V-VIII and XIV.**

Manufacturers Bidding Direct

If a manufacturer is bidding direct, that manufacturer should provide:

1) The current price list as a baseline, a single percentage discount off the current manufacturer's suggested retail price list (MSRP), for each category listed for products and/or accessories and the State of North Carolina net pricing. The pricing shall be per item and include all items covered by this IFB.

2) A list of manufacturer's authorized dealers to sale and service the State agencies. The list is to include the dealer name, mailing address, telephone and fax numbers, and the name of a contact person who will help to administer this contract. This dealer list should be submitted with the bid document.

Dealer representing a Manufacturer

1) A manufacturer should provide the same current manufacturer's suggested retail price list (MSRP) and pricing structure to each and every dealer/vendor. Therefore, all vendors bidding that manufacturer's list will be utilizing the same basis.

2) Each dealer representing a Manufacturer must bid a single percentage discount off the current manufacturer's suggested retail price list (MSRP), for each category listed for products and/or accessories.

ATTACHMENT A: PRCICING SUBMITTAL WORKBOOK can be accessed by clicking on the underlined link to the left.

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ATTACHMENT B: INSTRUCTIONS TO VENDORS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this IFB document.

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

3. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded. Regardless of error or omission, a Vendor shall not be permitted to increase its pricing after the deadline for submitting bids.

4. **BASIS FOR REJECTION**: Pursuant to 01 NCAC 05B .0501, the State reserves the right to reject any and all offers, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to the State, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of the State.

5. **EXECUTION:** Failure to sign the Execution Page (numbered page 1 of the IFB) in the indicated space will render bid non-responsive, and it shall be rejected.

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

7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each Vendor shall submit with its bid any sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid or available elsewhere will not satisfy this provision. Failure comply with these requirements shall constitute sufficient cause to reject a bid without further consideration.

8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.

9. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of contract award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of the Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law.

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

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

11. **HISTORICALLY UNDERUTILIZED BUSINESSES:** The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts.

12. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying a percentage increase to the price of any bid from a North Carolina resident Vendor. To the extent another state does so, North Carolina applies the same percentage increase to the bid of a vendor resident in that state. Residency is determined by a Vendor's "Principal Place of Business," defined as that principal place from which the overall trade or business of the Vendor is directed or managed.

13. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.

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

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

16. **MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.

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

18. **TABULATIONS**: Bid tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), https://www.ips.state.nc.us/ips/BidNumberSearch.aspx. Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after

the bid opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.

19. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM**: The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services of potential interests to them available on the Interactive Purchasing System, as well as notifications of status changes to those solicitations. Online registration and other purchasing information is available at the following website: http://ncadmin.nc.gov/about-doa/divisions/purchase-contract.

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

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

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

23. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its bid 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 bid.

24. **INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, at a reasonable time, the equipment, item, plant or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the State'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.

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ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS

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

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

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

3. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the purchasing agency for the purpose set forth in the Contract.

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

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

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

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

5. **SITUS AND GOVERNING LAW:** This Contract is made under and shall be governed, construed and enforced in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.

6. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.

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

9. **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.

10. **INTELLECTUAL PROPERTY INDEMNITY**: Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

11. **TERMINATION FOR CONVENIENCE:** If this contract contemplates deliveries or performance over a period of time, the State may terminate this contract at any time by providing 30 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for those items for which such option is exercised, less any payment or compensation previously made.

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

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

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

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

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

    In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of the Contract.

15. **INSURANCE:**

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

    a. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of $500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract within the State.

    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 within North Carolina in connection with the Contract. The minimum combined single limit shall be $250,000.00 bodily injury and property damage; $250,000.00 uninsured/under insured motorist; and $2,500.00 medical payment.

    REQUIREMENTS - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may

conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

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

17. ELECTRONIC PROCUREMENT:

(a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

(b) **THE SUCCESSFUL VENDOR(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF ALL GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

(c) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. Pursuant to G.S. 147-86.23, the Service will charge interest and late payment penalties on past due balances. Interest shall be charged at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due. The late-payment penalty will be ten percent (10%) of the account receivable. Within thirty (30) days of the receipt of invoice, Vendor may dispute in writing the accuracy of an invoice. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

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

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

VENDOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ANY SUB-CONTRACTOR OR DEALER INVOLVED IN PERFORMANCE UNDER THIS CONTRACT IN THE EVENT THAT SUCH SUB-CONTRACTOR OR DEALER DEFAULTS ON PAYMENT.

18. **COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

19. **ENTIRE AGREEMENT:** This IFB 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 IFB, any addenda hereto, and the Vendor's bid 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.

20. **ELECTRONIC RECORDS:** The State will digitize all Vendor responses to this solicitation, if not received electronically, as well as any awarded contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record, and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

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

22. **NO WAIVER:** Notwithstanding any other language or provision in the Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right, remedy or an event of breach or default on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right, remedy, breach or default on any other occasion or instance.

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

24. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.

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ATTACHMENT D: SUPPLEMENTAL VENDOR INFORMATION

HISTORICALLY UNDERUTILIZED BUSINESSES

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

Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this IFB. Any questions concerning NC HUB certification, contact the **North Carolina Office of Historically Underutilized Businesses** at (919) 807-2330. The Vendor shall respond to question #1 and #2 below.

a) Is Vendor a Historically Underutilized Business? ☑ **Yes** ☐ **No**

b) Is Vendor Certified with North Carolina as a Historically Underutilized Business? ☑ **Yes** ☐ **No**

If so, state HUB classification: Small, Woman-Owned Business

SUSTAINIBILITY

According to G.S. 143-58.2, it is the policy of this State to encourage and promote the purchase of products with recycled content and to purchase items that are reusable, refillable, repairable, more durable and less toxic to the extent that the purchase or use is practicable and cost effective.

Do the items offered have any recycled content? ☐ **Yes** ☑ **No**

If yes, what is the post-consumer recycled content? _____% What is the total recycled content? _____%

Other sustainable properties:

_____

_____

_____

_____

_____

_____

_____

_____

ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR

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

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

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

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

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

b) Vendor shall Identify all U.S. locations at which performance will occur:

Virginia Beach, Va and Durham, NC

Vendor shall provide notice, in writing to the State, of the relocation of the Vendor, employees of the Vendor, sub-Contractors of the Vendor, or other persons performing services under the Contract to a location outside of the United States.

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

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ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION

Name of Vendor: MERCO Biomedical

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

☑ The Vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: 12/18/2018 (If no audit within past 18 months, explain reason below)

☑ The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.

☑ The Vendor is current on all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.

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

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

☑ He or she is authorized to make the foregoing statements on behalf of the Vendor.

Note: This shall constitute a continuing certification and Vendor shall notify the Contract Lead within 15 days of any material change to any of the representations made herein.

— If any one or more of the foregoing boxes is NOT checked, Vendor shall explain the reason(s) in the space below:

Krista Kalweit 12/30/2019

Signature Date

Krista Kalweit President

Printed Name Title

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

ATTACHMENT G: SUPPLIER INFORMATION

Vendor shall complete and return the following forms:

- NC Supplier Contact Form (Worksheet 1)
- Service and Distribution Form (Worksheet 2)
- Ordering Information Form (Worksheet 3)

Click on the following link to access this Excel Spreadsheet, ATTACHMENT G: SUPPLIER INFORMATION

Krista Kalweit 12/30/2019