


STATE OF NORTH CAROLINA Department of Information Technology Statewide IT Procurement Office	REQUEST FOR BEST AND FINAL OFFER NO. ITS-400277
	Offers will be received until: 2:00 PM Eastern Time on March 5, 2019
	Issue Date: February 26, 2019
Refer <u>ALL</u> inquiries regarding this BAFO to: Debbie Patterson, Procurement Officer debbie.patterson@nc.gov 919-754-6619	Commodity Number: 204
	Description: IT Infrastructure Solutions
	Using Agency: Statewide
See page 2 for mailing instructions.	Requisition No.: N/A

NOTICE TO VENDOR: Offers, subject to the conditions made a part hereof, will be received at this office, 3900 Wake Forest Road, Raleigh, NC 27609 until 2:00 PM Eastern Time on the day of opening and then opened, for furnishing and delivering the goods and services as described herein. Refer to page 2 for proper mailing instructions. Offers submitted via facsimile (fax) machine in response to this Best and Final Offer (BAFO) will not be accepted. Offers are subject to rejection unless submitted on this form.

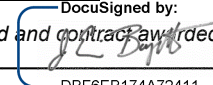
EXECUTION: In compliance with this Request for Best and Final Offer (BAFO), and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all goods and services which are offered, at the prices agreed upon and within the time specified herein. Pursuant to N.C.G.S. §143B-1354 and under penalty of perjury, the undersigned Vendor certifies that this offer has not been arrived at collusively or otherwise in violation of Federal or North Carolina law and this offer is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting an offer for the same commodity, and is in all respects fair and without collusion of fraud. The signature below is adopted as my electronic signature as provided in Article 40 of the NC General Statutes,

Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.

OFFEROR: CISCO SYSTEMS INC		
STREET ADDRESS: 170 W TASMAN DRIVE	P.O. BOX: Click here to enter text.	ZIP: 95134
CITY & STATE: SAN JOSE CA	TELEPHONE NUMBER: Click here to enter text.	TOLL FREE TEL. NO: Click here to enter text.
PRINT NAME & TITLE OF PERSON SIGNING: Steve Kite, Authorized Signatory	FAX NUMBER: Click here to enter text.	
AUTHORIZED SIGNATURE: 	DATE: March 8 th , 2019	E-MAIL: Click here to enter text.

APPROVED BY LEGAL
Offer valid for one hundred-twenty (120) calendar days from date of offer opening unless otherwise stated here: [Click here to enter text.](#) days.

ACCEPTANCE OF OFFER: If the State accepts any or all parts of this offer, an authorized representative of NCDIT shall affix his/her signature to the Vendor's response to this Request for BAFO. The acceptance shall include the response to this BAFO, any provisions and requirements of the original IFB which have not been superseded by this BAFO and the Department of Information Technology Terms and Conditions. These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

FOR NCDIT USE ONLY DocuSigned by: Offer accepted and contract awarded this _____ day of _____, 2019 as indicated on attached certification, by  (Authorized representative of NCDIT). DBF6EB174A72411...	3/14/2019 5:08 PM EDT
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DELIVERY INSTRUCTIONS: Vendor shall deliver **one (1) signed original version of its offer**, subject to the conditions made a part hereof, and **one (1) signed, executed electronic copy of its offer** on USB Flash Drive. The files shall not be password-protected and shall be capable of being copied to other media.

Vendor shall address envelope and indicate IFB Number as shown below. Please note that the U.S. Postal Service does not deliver any mail (U.S. Postal Express, Certified, Priority, Overnight, etc.) on a set delivery schedule to this Office. **It is the responsibility of the Vendor to have the offer in this Office by the date and time of opening specified in this document.**

Vendor may submit its response by **email** instead of by US Mail or other delivery service. Bid responses may be emailed to **debbie.patterson@nc.gov** no later than the specified time and date of opening.

DELIVER TO:
IFB NUMBER: ITS-400277 North Carolina Department of Information Technology Attn: Debbie Patterson, Procurement Officer 3700 Wake Forest Road Raleigh, NC 27609

SOLICITATION REQUEST FOR BEST AND FINAL OFFER (BAFO): This request is to acquire a best and final offer from Vendor for IT Infrastructure Solutions. The offer should integrate the previous response to the IFB and Addendum, and any changes listed below, responses to bid clarification questions in Table 1, and the updated Attachment D submitted by the Vendor. Any individual Vendor can receive a different number of requests for BAFOs than other Vendors.

NOTE: This IFB is still in the evaluation period. During this period and prior to award, possession of the BAFO, original bid response and accompanying information is limited to personnel of the Department of Information Technology (DIT) Statewide IT Procurement Office, and to agencies responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e., assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

The State intends to make progressive awards for this term contract due to the number of responsive Vendors and the State's desire to establish a multiple Vendor contract. One or more Vendors will receive Requests for a Best and Final Offer. Contract awards may be made as such Requests for BAFOs are completed. The State anticipates completing all awards in a timely manner.

BID CLARIFICATIONS: Vendor shall provide responses to bid clarifications in Table 1 in the gray-shaded space provided below each item.

#	IFB Section	Bid Clarifications
1	Vendor provided Appendix – Master Services Agreement	Vendor indicated content included in proposal was confidential. Vendor must warrant that material submitted as a part of its proposal to the State that is marked “confidential” meets the requirements of the Rules and Statutes referenced in Section G.1, Subsection 18 after receiving “necessary or proper review by counsel.” Should the Vendor still want material in its bid proposal to be marked “confidential” after receiving legal review of any such material, the Vendor must make such a warrant. Does Vendor warrant that the material submitted in its response meets the requirements of the Rules and Statutes referenced in Section G.1, Subsection

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#	IFB Section	Bid Clarifications
		18? If yes, Vendor shall specify which pages are confidential. If no, does Vendor agree to remove any and all confidentiality markings, labels, statements from its offer?
		Vendor agrees to remove its exception here and agrees to remove any confidentiality markings, labels, and statements from its offer. Please accept the revised Cisco Master Services Agreement submitted previously with Vendor's clarification to the BAFO with all confidentiality markings removed.
2	Attachment B – GS4	Any Reseller designated by Vendor must agree to the terms and conditions of the awarded contract. Any Reseller designated by Vendor must agree to meet the Service Level Agreement requirements per Section C, Subsection 14 (paragraphs b, c, & d) and the Performance Assurance requirements of Section C, Subsection 15 for Quote Time, Order Accuracy, and Invoice Accuracy (as amended in Addendum 1). Vendor shall confirm it agrees to include this language in any subsequent agreement with its designated Resellers on an awarded contract and work with its designated Resellers to track and report the listed Service Level Agreements versus the minimum thresholds in Table 3 in Section C, Subsection 15.
		Vendor proposes to provide the State's Procurement Office, on a quarterly basis, a report of any issues that customers have notified in writing to Cisco's Contracts Management Office relating to 1) delivery time, 2) quote time, 3) order accuracy and/or 4) invoice accuracy of any transactions made under the contract. Cisco will provide a summary of such issue(s), if any, and the resolution or pending resolution(s) of the identified issue(s). This report will be included along with the quarterly, agreed upon Purchase Activity Report, even if no such issues were raised with Cisco's Contracts Management Office during that reporting period.
3	Attachment B – GS19	In GS19, the State asked the Vendor to describe how it will provide an online ordering site for user-replaceable <u>warranty</u> items. Does Cisco offer an online ordering site for user-replaceable <u>warranty</u> items for customers in the State of North Carolina? Or, are user-replaceable warranty items not available for the products offered by Cisco within the scope of this contract?
		Vendor does not offer an online ordering site for "user-replaceable warranty items" for its customer base overall, including customers in the State of North Carolina. During the warranty period, State of North Carolina customers may contact their designated reseller that they purchased the equipment through and the reseller would then be able to process an online Return Material Authorization ("RMA") for the State customer. After the warranty period has expired, so long as the customer has a valid support agreement in place, the State customer may process an RMA online through the support page at www.cisco.com . In either case, the State customer may replace the product when the new equipment/card/item arrives.
4	Attachment B – GS20	Any Reseller designated by Vendor must agree to the terms and conditions of the awarded contract. Any Reseller designated by Vendor must agree to provide online order tracking system that can be accessed 24x7 by a State user. If a reseller is unable to provide an online order tracking system, then reseller agrees to respond to order status requests via phone or email within one business day (excluding State holidays). Vendor shall confirm it agrees to include this language in any subsequent agreement with its designated Resellers on an awarded contract.
		Vendor takes exception to this requirement. Vendor's model uses fulfillment partners to provide order tracking information. However, since Vendor will not be taking orders directly, that option may be available through the authorized resellers that Vendor will qualify and onboard after contract award. Please be advised that for some resellers, this requirement may be very challenging and costly to

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#	IFB Section	Bid Clarifications
		implement, especially for the smaller value-added resellers. Thus, Vendor would like to discuss further with the State options available for those smaller value-added resellers.
5	Attachment B – GS21	Any Reseller designated by Vendor must agree to the terms and conditions of the awarded contract. Any Reseller designated by Vendor must agree to accept Agency orders that are placed via regular mail, fax, email, electronic procurement, or procurement card, with no additional fees for orders purchased via E-Procurement or with a procurement card. Vendor shall confirm it agrees to include this language in any subsequent agreement with its designated Resellers on an awarded contract.
		Vendor agrees that it shall require its designated resellers to accept Agency orders that are placed via regular mail, fax, email, electronic procurement, or procurement card, with no additional fees for orders purchased via E-Procurement or with a procurement card. Vendor's model uses fulfillment partners to quote, receive and process orders. Since Vendor will not be taking orders directly, that option will be available through the authorized resellers that Vendor will qualify and onboard after contract award.
6	Attachment B – GS24	<p>Per Addendum 1 to IFB ITS-400277, M2: Section C, Subsection 14d has been replaced in its entirety: d. Invoice Accuracy</p> <p>Vendor shall issue invoices that match the Agency Purchase Order issued to the Vendor and the Vendor's quote.</p> <p>Does Vendor agree to Section C, Subsection 14d as modified in Addendum 1?</p>
		Vendor agrees to Section C, Subsection 14d as modified in Addendum 1 with the understanding that fulfillment partners will be authorized to quote, invoice and take payment directly from the State.
7	Appendix of Vendor's Response: Exception to Terms: Section C, Subsection 22: Contract Administration	<p>Vendor shall describe how it will meet the Contract Administration specifications of Section C, Subsection 22:</p> <p>22. <u>CONTRACT ADMINISTRATION:</u> NCDIT Contract Administrator will monitor Vendor performance as necessary over the duration of the contract with respect to satisfactory fulfillment of all contractual obligations. Performance assessments may comprise: delivery, condition of delivered goods, specification compliance of delivered goods, prompt and appropriate resolution of warranty claims, adequate servicing of contract in any and all aspects which the contract has stipulated, maintaining current State pricing on the web site, and prompt, complete and satisfactory resolution of any contractual discrepancies. Further, if a Vendor fails to adhere to the terms and conditions or other requirements of this contract or any subsequent solicitation issued under the framework of this contract, then the State, at its sole discretion, may remove the Vendor from the contract (or subsequent solicitation requests issued under this contract). The State may elect to remove the Vendor on a temporary or permanent basis.</p> <p>Vendor shall provide the NCDIT Contract Administrator with the following reports, using Attachment G Contract Reporting Template, to support contract administration activities:</p> <p>a. Purchase Activity Report: Vendor agrees to provide to the NCDIT Contract Administrator reports of sales achieved under the contract.</p>

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#	IFB Section	Bid Clarifications
		<p>These reports shall be provided quarterly, within thirty (30) calendar days from the last day of the reporting quarter. Report shall include the following data elements at a minimum:</p> <ul style="list-style-type: none"> • Purchasing Agency • Purchasing Agency Segment (e.g., State Agency, K-12, Community College) • Purchase Order Number • Invoice Date • Manufacturer Name • Manufacturer Model Number • Manufacturer Part Number • IT Infrastructure Solutions Segment (e.g., Servers, Storage, Networking Equipment, Converged IT Infrastructure Solutions, Peripherals, Value Added Services) • Item Description • Serial Number (if applicable) • Quantity Delivered • Unit of Measure • Unit List Price • Standard Contract Unit Price (e.g., Unit List Price multiplied by (1 minus Minimum Discount %)) • Final Unit Price of Item • Upgraded / Extended Warranty Sold Flag (Yes / No) • Description of Upgraded / Extended Warranty • Upgraded / Extended Warranty Part Number • Upgraded / Extended Warranty MSRP • Upgraded / Extended Warranty Final Price <p>b. Warranty Report: Vendor shall provide the NCDIT Contract Administrator upon request a consolidated history of all warranty claims for devices purchased under this contract. Report shall include the following data elements at a minimum:</p> <ul style="list-style-type: none"> • Purchasing Agency • Manufacturer Name • Manufacturer Model Number • Manufacturer Part Number • IT Infrastructure Solutions Segment (e.g., Servers, Storage, Networking Equipment, Converged IT Infrastructure Solutions) • Item Description • Serial Number (if applicable) • Date of Purchase • Warranty Claim Date • Problem Description • Reason Description • Resolution

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#	IFB Section	Bid Clarifications
		<p>c. Service Level Report: Vendor shall provide the NCDIT Contract Administrator with a report of Service Level Agreements under the contract <u>where Vendor's performance fell below the minimum threshold</u>. These reports shall be provided quarterly, within thirty (30) calendar days from the last day of the reporting quarter. Report shall include the following data elements at a minimum:</p> <ul style="list-style-type: none"> • Purchasing Agency Name • Service Level Agreement Name • Service Level Agreement Minimum Threshold • Service Level Agreement Actual Performance • Number of Instances Below Minimum Threshold During Reporting Period • Explanation for Below Minimum Threshold Performance • Vendor's Plan to Address Below Minimum Threshold Performance <p>d. Historically Underutilized Business Report: Vendor shall provide the NCDIT Contract Administrator with a report of the percentage of the Vendor's contract sales that are attributed to Historically Underutilized Businesses (HUBs) as defined by State of North Carolina. This would be all contract sales if the Vendor is a HUB, or could be contract sales associated with subcontractors that are HUBs and used by the Vendor to deliver goods or Services under the contract. These reports shall be provided quarterly, within thirty (30) calendar days from the last day of the reporting quarter. Report shall include the following data elements at a minimum:</p> <ul style="list-style-type: none"> • Purchasing Agency Name • Purchasing Agency Segment • Total Contract Sales for Reporting Period • Percentage of Contract Sales for Reporting Period that are Attributed to HUBs <p>e. Data Template and Post-Award Meeting: Reserved</p> <p>f. Vendor shall work with NCDIT's Statewide IT Strategic Sourcing Office or Agency to address any special reporting requests.</p>
	<p>Vendor proposes as follows:</p> <ul style="list-style-type: none"> • Section C, Subsection 22(a): Please accept the sales reporting template titled "Sales Reporting Template" submitted along with Vendor's clarification offer that Vendor uses for sales volume reporting under all our SLED direct contracts. As you can see, we capture a majority of the pertinent information that you are looking for with respect to the "Purchase Activity Report". • Section C, Subsection 22(b): Resolved. State agreed to proposed language. • Section C, Subsection 22(c): Same proposed language as for Section B, Subsections 14 and 15 above 	

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#	IFB Section	Bid Clarifications
8	Appendix of Vendor's Response: Exception to Terms: Section G.1, Paragraph 6: Vendor's Representation	<p>Vendor agrees to remove its exception to Section G.1, Paragraph 6 from its response to IFB ITS-400277 and agrees to the IFB term as modified below:</p> <p>6) <u>VENDOR'S REPRESENTATION</u>: Vendor warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). 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. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).</p> <p>a) Intellectual Property. Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.</p> <p>b) Inherent Services. If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.</p> <p>c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.</p> <p>d) Warranty as to Equipment; Hardware. Reserved.</p>
Vendor agrees to remove its exception to Section G.1, Paragraph 6 from its response to IFB ITS-400277 and agrees to the IFB term as modified above.		

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#	IFB Section	Bid Clarifications
9	Appendix of Vendor's Response: Exception to Terms: Section G.1, Paragraph 13: Payment Terms	<p>Vendor agrees to remove its exception to Section G.1, Paragraph 13 from its response to IFB ITS-400277 and agrees to the IFB term as modified below:</p> <p>13) PAYMENT TERMS: Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables or acceptance of services as described in the Service Description documents, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency (such approval shall not be unreasonably withheld by the State), the Agency may:</p> <ul style="list-style-type: none"> a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however c) 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.
Vendor agrees to remove its exception to Section G.1, Paragraph 13 from its response to IFB ITS-400277 and agrees to the IFB term as modified above.		
10	Appendix of Vendor's Response: Exception to Terms: Section G.1, Paragraph 21: Patent, Copyright, and Trade Protection	<p>Vendor agrees to remove its exception to Section G.1, Paragraph 21 from its response to IFB ITS-400277 and agrees to the IFB term as modified below:</p> <p>21) PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:</p> <ul style="list-style-type: none"> a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes. b) Vendor shall not acquire any right, title, and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

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#	IFB Section	Bid Clarifications
		<p>c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim (“IPR Claim”) that the Services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States as of the Effective Date of this Contract. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:</p> <ul style="list-style-type: none"> i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and, ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense; and, iii) That the State give Vendor reasonable information and assistance reasonably requested by Vendor in connection with the conduct of the defense and settlement of such claim and any subsequent appeal. <p>d) Should any Services or software supplied by Vendor, or the operation thereof become, or in the Vendor’s opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, immediately terminate both parties’ respective rights and obligations under this Agreement with regard to the Product, in which case the State will promptly return the Product to Vendor and Vendor will refund to the State the price originally paid by the State to Vendor for the Product, as depreciated or amortized by an equal annual amount on a straight line basis over three years from date of original shipment. the Vendor agrees to take back such goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund to the State the price originally paid by the State to Vendor for the Product, as depreciated or amortized by an equal annual amount on a straight line basis over three years from date of original shipment. any sums the State has paid Vendor less any reasonable amount for use or damage</p> <p>e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i)</p>

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#	IFB Section	Bid Clarifications
		<p>results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.</p> <p>f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.</p> <p>g) THIS SECTION STATES THE ENTIRE OBLIGATION OF VENDOR AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF THE STATE, IN RESPECT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS. THIS INDEMNITY OBLIGATION AND REMEDY ARE GIVEN TO THE STATE SOLELY FOR THE STATE'S BENEFIT AND IN LIEU OF, AND CISCO DISCLAIMS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY PRODUCT OR SERVICES.</p>
		Vendor agrees to remove its exception to Section G.1, Paragraph 21 from its response to IFB ITS-400277 and agrees to the IFB term as modified above.
11	Appendix of Vendor's Response: Exception to Terms: Section G.1, Paragraph 23: Assignment	<p>Vendor agrees to remove its exception to Section G.1, Paragraph 23 from its response to IFB ITS-400277 and agrees to the IFB term as stated below:</p> <p>23) ASSIGNMENT: Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Contract. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.</p>
		Vendor agrees to remove its exception to Section G.1, Paragraph 23 from its response to IFB ITS-400277 and agrees to the IFB term as stated above.
12	Appendix of Vendor's Response: Exception to Terms: Section G.1, Paragraph 26: Default	<p>Vendor agrees to remove its exception to Section G.1, Paragraph 26 from its response to IFB ITS-400277 and agrees to the IFB term as modified below:</p> <p>26) DEFAULT: In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within thirty (30) days, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.</p> <p>a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract or an applicable SOW, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-</p>

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#	IFB Section	Bid Clarifications
		<p>1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.</p> <p>b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offers that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.</p> <p>c) Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.</p>
	Vendor agrees to remove its exception to Section G.1, Paragraph 26 from its response to IFB ITS-400277 and agrees to the IFB term as modified above.	
13	Appendix of Vendor's Response: Exception to Terms: Section G.1, Paragraph 29(b)	<p>The State provided an Explanation of the Limitation of Liability Clause in Section C, Sub-Section 40.</p> <p>Vendor agrees to the IFB term as modified below:</p> <p><u>EXPLANATION OF LIMITATION OF LIABILITY CLAUSE:</u> In Paragraph 29 of Section G, the State interprets the phrase "contract value" as one and a half times the value of the purchase order or cost of cover (whichever is greater) in the event of equipment failure or failure to deliver equipment according to the requirements of the contract; and two times the purchase order value for all other contract damages.</p>
	Vendor agrees to the IFB term as modified above.	
14	Appendix of Vendor's Response: Exception to Terms: Section G.1, Paragraph 30: Vendor's Liability for Injury to Persons or Damage to Property	<p>Vendor agrees to remove its exception to Section G.1, Paragraph 30 from its response to IFB ITS-400277 and agrees to the IFB term as stated below:</p> <p><u>30) VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:</u></p> <p>a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.</p> <p>b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of</p>

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#	IFB Section	Bid Clarifications
		<p>any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.</p> <p>c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.</p>
<p>Vendor agrees to remove its exception to Section G.1, Paragraph 30 from its response to IFB ITS-400277 and agrees to the IFB term as stated above.</p>		

Table 1: Bid Clarifications

BAFO, IFB ITS-400277 Modifications:

To the extent that any of the Vendor’s terms presented or incorporated in the Vendor’s response to IFB ITS-400277 conflict with the terms and conditions of the IFB, the IFB’s terms will take precedence except as modified herein. Terms and Conditions presented in Vendor’s IFB response comprising IP, warranty, licensing agreements, maintenance and support for licensed products or software shall supersede the IFB ITS-400277 Terms and Conditions for IP, warranty, licensing software, subscription services for software and software use, and Software as a Service; provided, however that the term of such licensing agreements shall not supersede other terms and conditions of the IFB except as specifically agreed.

The following modifications are made to Section G, “Department of Information Technology Terms and Conditions” where “reserved” removes such term as void:

1. Sub-Section 1 “General Terms and Conditions Applicable to All Purchases”
 - Paragraph 8 “Maintenance/Support Services” is reserved.
 - Paragraph 5 and Paragraph M6 of Addendum 1 “Subcontracting” are modified as follows:

The Vendor may subcontract the performance of required Services with other Vendors or third parties, or change subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor. In the event of a dispute that is not resolved within thirty (30) days, Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors.

- Paragraph 14 “Acceptance” is modified as follows:

ACCEPTANCE CRITERIA: In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor within 5 business days (“Acceptance Period”) ~~30 calendar days~~ following delivery of any Deliverable

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described in the Contract if it is not acceptable. If external or concealed damage is revealed during the Acceptance Period, then the State shall notify Vendor immediately and the notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. At Vendor's option, Vendor shall (a) repair such damage, (b) ship a replacement, or (c) refund the purchase price of the Deliverable (upon return of the Deliverable). Acceptance by the State shall not be unreasonably withheld; ~~but may be conditioned or delayed as required for installation and/or testing of Deliverables.~~ Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures which shall be completed no later than 5 business days post-delivery. ~~Should the Deliverables fail to meet any specifications or acceptance criteria~~ The State may also exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. ~~Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection.~~ If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the rights available under 9 NCAC 06B.1206. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within fourteen (14) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein. Any reference in Vendor standard agreement(s) to deemed acceptance upon delivery of Deliverables is void.

- Paragraph 18 "Confidentiality" is modified as follows:
The following sentence is removed from the first paragraph: "The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action".

CONFIDENTIALITY: In accordance with N.C.G.S. §§143B-1350(e), 143B-1375 and 09 NCAC 06B.0103 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential. The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.

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b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. §132-1 et seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

2. Sub-Section 2 "Department of Information Technology Terms and Conditions Applicable for Software and Services" is modified to strike Paragraphs 1, 2, 3, 4, and 5. Paragraph 6 is modified as follows:

6) STATE PROPERTY AND INTANGIBLES RIGHTS: The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all Deliverables as defined in Sub-Section 1, Paragraph 19. To the extent that any Vendor Technology is contained in any of the Deliverables, and not licensed pursuant to the terms of a license agreement, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's internal business purposes. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

3. Sub-Section 3 "Department of Information Technology Terms and Conditions Applicable for Software as a Service (SaaS) is reserved in its entirety.
4. In the event of any conflict between the terms and conditions of this Agreement and the agreements included in Vendor's IFB response, the following terms and conditions of this Agreement shall always take precedence:
 - Section G, Sub-Section 1, Paragraph 13 "Payment Terms". The State does not agree to pay any late payment or interest fees on Vendor invoices.
 - Section G, Sub-Section 1, Paragraph 18 "Confidentiality", as modified herein.
 - Section G, Sub-Section 1, Paragraph 25 "Dispute Resolution"
 - Section G, Sub-Section 1, Paragraph 28 "Termination"

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- Section G, Sub-Section 1, Paragraph 42 “Governing Laws, Jurisdiction, and Venue”
- Notwithstanding any terms, definitions, or documents incorporated by reference in the Vendor’s IFB response,
 - the term “confidential information” shall be determined pursuant to the IFB and the N.C. Public Records Act,
 - the term “affiliate” shall not apply to the State or any authorized purchaser,
 - terms requiring payment of audit costs shall not apply,
 - merger clauses, “entire agreement” clauses, and clauses of similar intent shall not apply,
 - arbitration provisions, provisions limiting actions that differ from the statutes of limitation established by North Carolina law and terms requiring indemnification by the State or hold harmless provisions shall not apply, and
 - in matters of records retention, the State’s record retention schedules and the NC Public Records Act shall control.

5. The following terms are added for inclusion Section C of the final Agreement:

- Software and/or Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an “ok” or “agree” button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Software and/or Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Software and/or Services. The State shall not be subject to contracting through ratification by use.
- Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Vendor will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support. The Vendor is specifically precluded from an act or action that does, or may, subject the State’s data or information, or the State, to European Union (EU) jurisdiction.
- Automatic renewals of maintenance or service agreements are not permitted under this Agreement.
- State has the authority to transfer or assign Vendor’s products, licenses, or services in accordance with N.C.G.S. §143A-6, and other applicable law.
- Vendor shall provide State notice any changes to the terms of its standard agreement(s), including but not limited to licensing terms, AUP, TOU, TOS, and the obtain the State’s agreement to incorporate such changes into the State’s agreement. Unilateral change provisions without Vendor notification and the State’s agreement are void.
- Agency Purchase Orders supersede any Vendor Ordering Document. To the extent that any Vendor Ordering Documents are utilized, the terms and provisions of such documents shall be

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subordinate to the Agreement established by IFB ITS-400277 and the Ordering Document shall be utilized solely for administrative purposes.

- Award of a contract shall not constitute the State's agreement with any open source licensing agreements. The State reserves the right to review and negotiate such third party open source agreements at the time of a specific procurement.
- The State reserves the right to negotiate more specific terms as necessary to comply with changes in law or regulation, whether State or federal, for reasons of privacy or security of data, or for conditions of funding for the procurement.

6. Section C, Paragraph 17 "Contract Changes" is modified as follows:

CONTRACT CHANGES: Subject to written pre-approval from the NCDIT Contract Administrator, Vendor may offer additional IT Infrastructure Solution models, peripherals, extended warranties, and maintenance plans that are in the scope of this IFB and are within awarded Segments. If the Vendor uses resellers to accept and deliver orders, then it is the responsibility of Vendor to apprise such resellers of all contract changes. Prices may be decreased at any time without prior approval.

7. Section C, Paragraph 22(e) "Contract Administration/Data Template and Post-Award Meeting" is modified as follows:

Data Template and Post-Award Meeting: Reserved

8. Section G.1, Paragraph 24 "Insurance Coverage" is modified as follows:

INSURANCE COVERAGE: During the term of the Contract, the Vendor at its sole cost and expense shall maintain the following coverage and limits:

- a) **Worker's Compensation** - The Vendor shall maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and
- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and
- d) Maintaining the required insurance is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

9. Section G.1, Paragraph 34 "Time is of the Essence" is modified as follows:

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TIME IS OF THE ESSENCE: Except for a Force Majeure event as defined within this Contract, time is of the essence in the performance of this Contract.

BAFO COST: Based on comparison of Vendor's initially submitted costs with current North Carolina similar contracts and other states' similar contracts, the State encourages the Vendor to supply more competitive prices for all applicable categories in Attachment D. Vendor shall submit its most competitive prices by updating the version of Attachment D that was submitted by the Vendor to the State in response to the IFB and returning the updated Attachment D with the Vendor's BAFO submission.

15	Vendor shall indicate below if it has revised pricing and submitted an updated Attachment D in Excel format with its response to this request for BAFO.
	Click here to enter text.