

**NORTH CAROLINA GENERAL ASSEMBLY**

**Report on Costs Associated with Providing Nutrient Controls that are Adequate to Offset  
Point Source and Nonpoint Source Discharges of Nitrogen and Other Nutrients**

**REQUEST FOR PROPOSAL**

**15 December 2006**

Sealed proposals subject to the conditions made a part hereof will be received until **5:00 p.m., Friday 5 January 2007**, for furnishing services described herein. Send all proposals to the following:

**George F. Givens, Commission Counsel  
Environmental Review Commission  
General Assembly of North Carolina  
545 Legislative Office Building  
300 North Salisbury Street  
Raleigh, North Carolina 27603  
Phone: 919-733-2578**

The contact persons to whom you should direct all inquiries and questions about the request for proposal are George F. Givens and Jeffrey Hudson at the above address. E-mail: [georgeg@ncleg.net](mailto:georgeg@ncleg.net) and [jeffreyh@ncleg.net](mailto:jeffreyh@ncleg.net).

**NOTE:** Indicate firm name, "Technical Proposal" or "Cost Proposal" on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

## **Introduction**

In accordance with Section 2 of Session Law 2006-215 and pursuant to G.S. 120-70.44(c), the North Carolina Environmental Review Commission (ERC) is seeking a consultant to:

1. Estimate the length of time that the existing North Carolina Nutrient Offset Fee Payments Program (NOFPP) will be able to continue as a completely self-sustaining program capable of providing adequate mitigation for the additional nitrogen loading purchased at the current cost of \$11 per pound of nitrogen.
2. Study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen in the Neuse River Basin.
3. Study how a total nutrient offset payment fee should be determined.
4. Provide information and outline options, including the advantages and disadvantages of each option, to assist the ERC in deciding whether nutrient offset payments should be authorized for additional nutrients, including phosphorus, and whether the NOFPP should be expanded to other river basins, including the Tar-Pamlico River Basin.
5. Evaluate the ability of public entities other than the Environmental Enhancement Program (EEP) and private entities to provide nutrient offsets.
6. Prepare a comprehensive review and discussion of the types of potential nutrient mitigation efforts available.

## **Qualifications**

Potential vendors submitting proposals must demonstrate:

1. Knowledge of and experience with the NOFPP.
2. An ability to estimate the length of time that the existing NOFPP will be able to continue as a completely self-sustaining program capable of providing adequate mitigation for the additional nitrogen loading purchased at the current cost of \$11 per pound of nitrogen.
3. An ability to determine an accurate cost per pound factor for nitrogen, phosphorus, and other nutrients from point and nonpoint sources based on the cost of providing the appropriate mitigation that is required to offset this additional nutrient loading in accordance with Session Law 2006-215, 15A NCAC 2B .0235, and 15A NCAC 2B .0240.

4. An ability to recommend how a total nutrient offset payment fee should be determined.
5. Knowledge of and experience with nutrient issues in the river basins of North Carolina.
6. Knowledge of and experience with public entities other than the EEP and private entities that are capable of providing nutrient offsets.
7. Knowledge of and experience with the types of potential nutrient mitigation efforts available.
8. The ability to produce clear, well-written, and well-illustrated reports by providing examples of completed projects.

### **Work Plan**

The vendor shall prepare a report that will:

1. Estimate the length of time that the existing NOFPP will be able to continue as a completely self-sustaining program capable of providing adequate mitigation for the additional nitrogen loading purchased at the current cost of \$11 per pound of nitrogen as authorized in Session Law 2006-215.
2. Contain a proposed cost per pound for nitrogen point and nonpoint source loading in the Neuse River Basin for potential use in the NOFPP.
3. Make specific recommendations as to how a total nutrient offset payment fee should be determined, including any formula and the specific factors that should be incorporated into the calculation of the total nutrient offset payment fee.
4. Provide information and outline options, including the advantages and disadvantages of each option, to assist the ERC in deciding whether:
  - a. Nutrient offset payments should be authorized for other nutrients, including phosphorous, and present a proposed cost per pound factor for the point and nonpoint source loading from these additional nutrients.
  - b. The NOFPP should be expanded to other areas of the State, including specifically the Tar-Pamlico River Basin.
5. Evaluate the ability of public entities other than the EEP and private entities to provide nutrient offsets. This evaluation shall include a determination of whether, in comparison with the EEP, other entities are able to:
  - a. Provide nutrient offsets of comparable effectiveness with respect to water quality.
  - b. Deliver nutrient offsets in a comparable or shorter time period.

- c. Deliver nutrient offsets at a comparable or lower cost.
6. Contain a comprehensive review and discussion of the types of potential nutrient mitigation efforts available.

The vendor shall contact and consult officials from State and local government agencies, interested stakeholders, and other individuals and organizations having knowledge and information about the NOFPP, nutrient issues in the river basins of North Carolina, and nutrient offsets generally. The vendor shall specifically evaluate the analysis of costs for nutrient offsets conducted by the Department of Environment and Natural Resources that was the basis of the Environmental Management Commission's March 2006 amendments to 15A NCAC 2B .0235 and 15A NCAC 2B .0240.

The vendor shall prepare the first phase report by 16 February 2007 and shall complete the entire report, including any revisions needed in the first phase report by 1 May 2007. The vendor shall provide the contracting officer an opportunity to review the draft first phase report one week before it is due and the final report two weeks before it is due and shall take review comments into account when preparing the first phase and final reports. The report shall be prepared in both paper and electronic formats.

In addition to a proposal based on the foregoing schedule, the vendor may propose a study based on an alternate schedule that allows additional time for completion of a thorough study. Preference will be given to proposals that envision completion of a thorough study of the following issues according to the foregoing schedule or in an alternative timeframe that will ensure that the study will be useful to the 2007 Regular Session of the General Assembly:

1. Estimate the length of time that the existing North Carolina Nutrient Offset Fee Payments Program (NOFPP) will be able to continue as a completely self-sustaining program capable of providing adequate mitigation for the additional nitrogen loading purchased at the current cost of \$11 per pound of nitrogen.
2. Study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen in the Neuse River Basin.
3. Study how a total nutrient offset payment fee should be determined.
4. Provide information and outline options, including the advantages and disadvantages of each option, to assist the ERC in deciding whether nutrient offset payments should be authorized for additional nutrients, including

phosphorus, and whether the NOFPP should be expanded to other river basins, including the Tar-Pamlico River Basin.

## **Report Requirements**

### **First Phase Report**

The vendor shall prepare a first phase report that includes:

1. A detailed discussion of the methodology that will be utilized by the vendor to estimate the length of time that the existing NOFPP will be able to continue as a completely self-sustaining program capable of providing adequate mitigation for the additional nitrogen loading purchased at the current cost of \$11 per pound of nitrogen as authorized in Session Law 2006-215.
2. A detailed discussion of the methodology that will be utilized by the vendor to examine the costs associated with providing nutrient controls and the methods that will be employed to determine an appropriate cost per pound factor for nitrogen loading from point and nonpoint sources.
3. A detailed discussion of the methodology that will be utilized by the vendor to determine the formulation of a fee equation and the factors included in that equation.
4. A review of the methods that will be used by the vendor to assist the ERC in determining whether to include nutrients other than nitrogen and whether to expand the NOFPP into other areas of the State.
5. A review of the methods that will be used by the vendor to evaluate the ability of public entities other than the EEP and private entities to provide nutrient offsets.
6. A review of the methods that will be used by the vendor to prepare a comprehensive review and discussion of the types of potential nutrient mitigation efforts available.
7. Any preliminary findings and recommendations that the vendor determines to be appropriate.

### **Final report**

*Self-Sustainability of the Current Nutrient Offset Fee Payments Program (NOFPP)*

The report shall include an estimate of the length of time that the existing NOFPP will be able to continue as a completely self-sustaining program capable of providing adequate mitigation for the additional nitrogen loading purchased at the current cost of \$11 per pound of nitrogen as authorized in Session Law 2006-215.

#### *Examination of Costs Associated with Providing Nitrogen Controls*

The report must provide a thorough examination and discussion of the current costs associated with providing nutrient controls that are adequate to offset point and nonpoint source discharges of nitrogen. This examination should include a description of the types of projects that can be implemented to achieve necessary reductions and their respective costs. Because buffer restoration is one of the cost-effective approaches to achieve nutrient reductions, an analysis of the extent of buffer restoration opportunities that may be pursued to achieve reductions should also be included.

#### *Proposed Cost per Pound of Nitrogen*

The report shall propose and justify a cost per pound for nitrogen loading from point and nonpoint sources. This cost factor must be sufficient to allow the NOFPP to continue in operation for the indefinite future as a totally self-sustaining program while successfully mitigating all nitrogen loads for which payments are made into the program.

#### *Nutrient Offset Payments for Additional Nutrients*

The report shall provide information and outline options, including the advantages and disadvantages of each option, to assist the ERC in determining whether nutrient offset payments should be authorized for other nutrient loads, including phosphorus. For any additional nutrients that the report will examine for inclusion in the NOFPP, the vendor shall provide and fully justify a proposed cost per pound factor for loading from point and nonpoint sources of these additional nutrients. These proposed cost factors must be sufficient to allow the NOFPP to continue in operation for the indefinite future as a totally self-sustaining program while successfully mitigating all additional nutrient loads for which payments are made into the program.

#### *Calculation of Total Nutrient Offset Payment Fee*



In addition to the cost per pound factors for nitrogen, phosphorus, and any other nutrients that the vendor may examine for inclusion in the NOFPP, the report shall examine and provide a recommendation for the use of a comprehensive formula and the specific factors that will be included in that formula for the calculation of the total nutrient offset payment fee for each option that will be required for nutrient loadings to meet the objectives of the NOFPP. Examples of specific factors that may be considered for inclusion in a comprehensive fee formula might include, but are not limited to:

- **Annual Adjustment Factor:** A factor that may be applied on an annual basis to automatically adjust the cost per pound nutrient factors in order to ensure that these cost factors keep pace with inflation.
- **Land Cost Factor:** A factor that may be included in the total fee equation in order to allow for the incorporation of land costs in the final fee calculation. This factor may be deemed necessary in order to establish a spatial relationship between additional nutrient loading and the mitigation needed to offset that loading.
- **Maintenance Factor:** A factor that may allow the EEP or other State agency tasked with the monitoring and maintenance of mitigation projects to recoup their costs associated with monitoring and maintenance.
- **Administrative Costs Factor:** A factor that may allow the EEP or other State agency, tasked with providing the mitigation funded by the NOFPP to recoup their administrative costs associated with the management of the program.

Regardless of the specific factors included in the calculation of the total nutrient offset payment fee, the vendor must provide the documentation necessary to demonstrate that the proposed total fee calculation method will be sufficient to allow the NOFPP to continue in operation for the indefinite future as a totally self-sustaining program while successfully mitigating all additional nutrient loads for which payments are made into the program.

#### Expansion to Other Geographic Areas of the State

The report shall provide information and outline options, including the advantages and disadvantages of each option, to assist the ERC in determining whether the

NOFPP should be expanded to other areas of the State beyond the Neuse River Basin. The report shall specifically address the expansion of the NOFPP to the Tar-Pamlico River Basin for nitrogen and phosphorus. The vendor shall provide information necessary for the ERC to determine whether to expand the NOFPP to other areas of the State beyond the Neuse River Basin.

#### Evaluation of Other Nutrient Offset Providers

The report shall evaluate the ability of public entities other than the EEP and private entities to provide nutrient offsets. This evaluation shall include a determination of whether, in comparison with the EEP, other entities are able to:

- a. Provide nutrient offsets of comparable effectiveness with respect to water quality.
- b. Deliver nutrient offsets in a comparable or shorter time period.
- c. Deliver nutrient offsets at a comparable or lower cost.

#### Types of Mitigation

The report shall contain a comprehensive review and discussion of the types of nutrient mitigation that would adequately protect water quality that could be provided using the fees and cost factors recommended in the report. The report shall include:

1. Figures regarding the design, construction, and 30-year monitoring and maintenance costs of the types of nutrient mitigation.
2. Details regarding the nutrient removal rate for each type of nutrient mitigation that is discussed.
3. An analysis of the availability of the types of mitigation identified in order to ensure the long-term sustainability of the NOFPP.
4. A discussion of the adequacy and effectiveness of each type of nutrient mitigation in achieving reductions in nutrient loading and protecting water quality.

#### Meetings with Affected Stakeholders

Under the auspices of the Commission Counsel, the vendor will be required to periodically consult with and brief the stakeholders that are affected by, or interested in, this process in order to gather input from these affected parties. In



addition, the vendor may be required to present the First Phase Report, the Final Report, or both to the stakeholder group.

### **Presentations**

The vendor may be required to present a final report to the ERC. The vendor may also be expected to give several presentations of the final report to various other legislative committees.

### **Project Timeframe**

The schedule is listed below:

| <b>Activity</b>                   | <b>Date</b>      |
|-----------------------------------|------------------|
| Request for Proposals Distributed | 15 December 2006 |
| Proposals from Vendors Due        | 5 January 2007   |
| Award Contract                    | 19 January 2006  |
| First Phase Report                | 16 February 2007 |
| Final Report                      | 1 May 2007       |

In addition to a proposal based on the foregoing schedule, the vendor may propose a study based on an alternate schedule that allows additional time for completion of a thorough study. Preference will be given to proposals that envision completion of a thorough study of the following issues according to the foregoing schedule or in an alternative timeframe that will ensure that the study will be useful to the 2007 Regular Session of the General Assembly:

1. Estimate the length of time that the existing North Carolina Nutrient Offset Fee Payments Program (NOFPP) will be able to continue as a completely self-sustaining program capable of providing adequate mitigation for the additional nitrogen loading purchased at the current cost of \$11 per pound of nitrogen.
2. Study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen in the Neuse River Basin.
3. Study how a total nutrient offset payment fee should be determined.
4. Provide information and outline options, including the advantages and disadvantages of each option, to assist the ERC in deciding whether nutrient offset payments should be authorized for additional nutrients, including

phosphorus, and whether the NOFPP should be expanded to other river basins, including the Tar-Pamlico River Basin.

### **Required Contents for Proposal**

Please limit the proposal to approximately 10 pages, excluding examples of prior work.

The response to this request for proposals shall consist of the following sections:

- (a) Executive Summary – The Executive Summary shall consist of a brief summary of the contents of the proposal.
- (b) Corporate Background and Experience – This section shall include:
  - (1) Background information on the vendor's organization and details of vendor's experiences with similar projects.
  - (2) A list of at least three references, including contact persons and telephone numbers, for whom the vendor has performed similar work.
  - (3) Examples of previous work performed.
- (c) Financial Statement – The vendor's most recent financial statement or similar evidence of financial stability.
- (d) Project Staffing and Organization – This section shall include:
  - (1) Proposed staffing, deployment, and organization of personnel to be assigned to this project.
  - (2) Resumes of key personnel who will actually be assigned to the project, describing experience with similar projects and the responsibilities assigned to each person.
  - (3) A description of how the study will be planned, organized, and conducted.
- (e) Technical Proposal – This section shall include, in narrative, outline, or graphical form, the vendor's approach to accomplishment of the tasks outlined in the project description section of this request for proposals. This section shall include a description of each task and a schedule for completion of each task.

- (f) Cost Proposal – The cost proposal must be submitted in a separate sealed package and must contain the following information:
- (1) Personnel costs, including hourly rates and total hours.
  - (2) Travel and subsistence expenses.
  - (3) Fixed, overhead, support, or administrative costs, if any.
  - (4) Sub-vendor costs, if any.
  - (5) Other costs.
  - (6) Total cost for completion of the project.
  - (7) Rates for any additional analysis that may be requested during the project period.

### **Proposal Submittal Process**

1. The vendor shall submit two original and 10 copies of both the technical proposal and cost proposal, in separate sealed packages.
2. Each original shall be signed and dated by an official authorized to bind the firm.

### **Vendor Selection Process**

The selection of the vendor shall be determined by a "Best Value" methodology, with key factors to be considered to include experience of the vendor and its consultants with related projects and price.

### **General Conditions Related to Submittal of Proposals**

#### **1. Right to Reject**

The ERC reserves the unqualified right to reject any and all proposals when such rejection is deemed to be in the best interest of the State of North Carolina.

#### **2. Right to Accept Part of Proposal, Negotiate Content and Cost**

The ERC reserves the right to accept part of any proposal, and to divide any proposal into parts deliverable in stages over an extended time period. The ERC reserves the right to negotiate and alter the content, form, schedule, and

deliverables of any proposal or portion of a proposal accepted. The ERC reserves the right to negotiate the cost of any proposal or portion of a proposal accepted.

**3. Time for Acceptance**

Each proposal shall state that it is a firm offer that may be accepted within a period of 30 days from the date of submission.

**4. Unsolicited Proposal Changes**

Any unsolicited change to a proposal that is received after the closing date of this request for proposal will be rejected.

**5. Responsibility to Make Timely Submission**

The vendor is responsible for assuring the timely delivery of a proposal. Late proposals will be rejected without review.

**6. Cost for Proposal Preparation**

Any costs incurred by vendors in preparing or submitting offers are the vendor's sole responsibility. The ERC will not reimburse any vendor for any costs incurred prior to award.

**7. Elaborate Proposals**

Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired. Contractors are encouraged to limit proposals to approximately 10 pages or less (not including examples of work products).

We solicit your cooperation in the efforts of the State of North Carolina to promote sustainability. It is desirable that responses meet the following standards:

- Copies should be printed double sided.
- All submittals and copies should be printed on recycled paper with a minimum post-consumer content of 30% and indicate this information accordingly on the response.
- To the maximum extent practicable, all submittals and copies should minimize or eliminate use of non-recyclable or non re-usable materials.

- Submittals and copies should be submitted in a format which allows for easy removal of recyclable materials and recycling of paper materials.

**8. Oral Explanations**

The ERC shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.

**9. Confidentiality of Proposals**

In submitting its proposal the vendor agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the ERC or its Legislative Services Office staff until after the award of the contract.

**10. Form of Proposal**

Proposals shall be submitted in a form that may be incorporated verbatim into a contract.

**11. Exception to Terms**

Any exception, interpretation, or suggestion for clarification by the vendor to any of the terms and conditions of this request for proposals must be clearly stated by the vendor.

**12. Competitive Offer**

Pursuant to the provision of G.S. 143-54, and under penalty of perjury, the signer of any proposal submitted in response to this request for proposals thereby certifies that this proposal has not been arrived at collusively or otherwise in violation of either federal or North Carolina antitrust laws.

**13. Rights to Submitted Proposals**

All responses, inquiries, and correspondence relating to or in reference to this RFP shall become the property of the State of North Carolina when received.

**14. Vendor's Representative**

Each vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the vendor's proposal.

**15. Proprietary Information**

All vendors' information submitted in the proposal has the potential to become public information. Vendors are cautioned that any proprietary information contained in the proposal may not be protected as confidential and should not be submitted in response to this request for proposals.

**16. Historically Underutilized Businesses**

Pursuant to G.S. 143-48, the ERC invites and encourages participation in this procurement process by small contractors, minority contractors, physically handicapped contractors, and women contractors.

**Terms and Conditions of Resulting Contract**

The following are terms and conditions that will be included in the contract for conducting the project. Other terms and conditions may be added before the contract is signed.

**1. Vendor**

The contract is between the ERC, subject to the approval of the Legislative Services Commission (Commission), and the selected vendor (Vendor).

**2. Contract Period**

The terms of the contract shall begin at its signing and shall end on or before 1 June 2007, unless extended or terminated as provided in this document.

**3. Availability of Funds**

Any and all payments to the Vendor are dependent upon and subject to the availability of funds to the ERC or the Commission for the purpose set out in this agreement.

**4. Additional Contract Expenses**

The contract for the project is not a time and materials agreement. Any expenses of the vendor in addition to those contracted for, or above the contract amount, are the sole responsibility of the Vendor.

**5. Independent Vendor**

The Vendor shall be considered to be an independent vendor and as such shall be wholly responsible for the work to be performed and for the



supervision of its employees. The Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the ERC, the Commission, or the Legislative Services Office.

**6. Applicability of State Law Ethics Provisions**

Pursuant to G.S. 120C-100(6) and G.S. 138A-3(21), the Vendor is a legislative employee and is subject to the ethics requirements of Chapter 138A of the General Statutes (State Government Ethics Act) that are applicable to legislative employees. These ethics requirements include, but are not limited to, the prohibition on the acceptance of most gifts from lobbyists and lobbyists' principals and the mandatory ethics training required for all legislative employees. If the Vendor is a consulting corporation, the corporation will need to identify the individuals assigned to perform any work undertaken pursuant to any contract between the ERC and the Vendor as individual consultants so that these individuals' names can be provided to the State Ethics Commission for inclusion on the list of legislative employees subject to the lobbying laws. The Vendor shall familiarize itself with these and all other requirements of the State ethics law and shall ensure that it and its individual employees comply with these requirements.

**7. Key Personnel**

The Vendor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Commission. The individuals designated as key personnel for purposes of this contract are those specified in the Vendor's proposal.

**8. Subcontracting**

Work proposed to be performed under this contract by the Vendor or its employees shall not be subcontracted without prior written approval of the ERC.

**9. Confidentiality**

The Vendor agrees to protect the confidentiality of any files, data, or other materials provided by the Commission and to restrict their use to the purpose of performing the contract. The Vendor shall comply with the provisions of Article 17 of Chapter 120 of the North Carolina General Statutes regarding

confidentiality between the Vendor and members of the General Assembly. For purposes of this paragraph only, employees of the Vendor shall be considered "legislative employees" as defined in G.S. 120-129.

**10. Care of Property**

The Vendor agrees that it shall be responsible for the proper custody and care of any files or other property furnished by the Commission. The Vendor shall take all steps necessary to safeguard any property, including data, files, reports, or other information from loss, destruction, or erasure. Any costs or replacement expenses, or damages resulting from the loss shall be borne by the contractor when the loss occurred through its negligence.

**11. Copyright**

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

**12. Access to Persons and Records**

The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. The Vendor shall retain all records for a period of three years following completion of the contract. To the extent that the Vendor acts on behalf of the ERC and the Commission pursuant to the contract, the Vendor shall comply with and take any action necessary to facilitate compliance by the ERC and the Commission with the provisions of Chapter 132 of the General Statutes.

**13. Transfer or Assignment**

The contract shall not be transferred or assigned to a third party.

**14. Termination**

Upon mutual written agreement of the ERC or the Commission and the Vendor, the contract may be terminated at any time. Failure to perform by the Vendor may result in termination by the ERC or the Commission. In addition, the ERC or the Commission has the right to unilaterally terminate the contract at its discretion with 10 days written notice. In the event of termination, either by mutual consent or by unilateral action of the ERC or the Commission, the Vendor will be paid an amount commensurate with

work completed and the Vendor shall deliver all work completed prior to the date of termination.

**15. Performance and Default**

If, through any cause, the Vendor shall fail to fulfill in timely and proper manner the obligations under this agreement, the ERC or the Commission shall thereupon have the right to terminate this contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Vendor shall, at the option of the ERC or the Commission, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Vendor shall not be relieved of liability to the ERC or the Commission for damages sustained by the ERC or the Commission by virtue of any breach of this agreement, and the ERC or the Commission may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the ERC or the Commission from such breach can be determined. In case of default by the Vendor, the ERC or the Commission may procure the services from other sources and hold the Vendor responsible for any excess cost occasioned thereby. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**16. General Indemnity**

The Contractor shall hold and save the State of North Carolina, its officers, agents, and employees harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the Contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The Contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of the Contractor's goods to the State. The

representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

**17. Compliance with Laws**

The Vendor shall comply with all laws, ordinances, codes, rules, regulations, other provisions of law, and licensing requirements that are applicable to the conduct of its business, including those of all federal, state, and local agencies that have jurisdiction or authority

Vendor agrees not to use the results or existence of the contract, or the products produced pursuant to the contract as a part of any news release or commercial advertising without the prior written approval of the ERC or the Commission.

**23. Governing Law**

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

**24. Situs**

The place of this contract, its situs and forum, shall be Raleigh, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation, and enforcement shall be determined.

**25. Schedule of Payments**

The Legislative Services Office shall pay the Vendor according to the following schedule:

- (a) Fifteen percent (15%) of the total cost for completion of the project within fifteen (15) days after the Vendor delivers the First Phase Report.
- (b) Seventy percent (70%) of the total cost for completion of the project within fifteen (15) days after the Vendor delivers the Final Report.
- (c) Fifteen percent (15%) of the total cost for completion of the project within fifteen (15) days of the end of the contract period.

The ERC shall request the Legislative Services Office to make payments to the Vendor as provided in this paragraph upon determination by the ERC that the Vendor has satisfactorily completed all work required to be completed under the foregoing schedule.