

STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION Integrated Mobility Division	REQUEST FOR BEST AND FINAL OFFER ONE RFP 54-12008772-CM	
	Offers will be received until: June 17, 2025	
	Issue Date: June 17, 2025	
Refer <u>ALL</u> inquiries regarding this BAFO to: Thomas Busshart tjbusshart@ncdot.gov	Commodity Number: 920	
	Description: Transit Software Solution	
	Using Agency: NCDOT	
See page 2 for mailing instructions.	Requisition No.: 12008772	

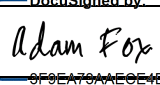
NOTICE TO VENDOR

Offers, subject to the conditions made a part hereof, will be received via email at tjbusshart@ncdot.gov until **12:00 p.m. EST** 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. Bids submitted via facsimile (fax) machine in response to this Best and Final Offer (BAFO) will not be accepted. Bids 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.

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

OFFEROR: Foxster Opco, LLC dba CTS Software		
STREET ADDRESS: P.O. Box 57		
CITY & STATE & ZIP: Swansboro, NC		PHONE 800-704-0064
PRINT NAME & TITLE OF PERSON SIGNING: Adam Fox CEO		FAX NUMBER: n/a
AUTHORIZED SIGNATURE DocuSigned by: 	DATE: 06/17/2025	E-MAIL: Adam.Fox@cts-software.com

Offer valid for forty-five (45), days from date of offer opening unless otherwise stated here: ____ days.

ACCEPTANCE OF OFFER

If the State accepts any or all parts of this offer, an authorized representative of NC Department of Transportation 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 Request for Proposal (RFP) 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).

<u>FOR STATE USE ONLY</u> Offer accepted and contract awarded this _____ day of _____, 20____, as indicated on attached certification, by _____ (Authorized representative of NC Department of Transportation).
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DELIVERY INSTRUCTIONS:

Deliver one (1) signed original executed offer to tjbusshart@ncdot.gov. The files must not be password-protected and must be capable of being copied to other media.

It is the responsibility of the Vendor to deliver the offer via electronic mail by the specified time and date of opening, regardless of the method of delivery. Address email and include RFP 54-12008772-CM – BAFO number as shown below.

DELIVER TO:
RFP 54-12008772-CM – BAFO NC Department of Transportation Attn: Thomas Busshart tjbusshart@ncdot.gov

Foxster Opco, LLC dba CTS Software should submit their BAFO response via email only. Responses email to tjbusshart@ncdot.gov no later than the specified time and date of opening. Please include the BAFO number in the email subject line.

SOLICITATION REQUEST FOR BEST AND FINAL OFFER (BAFO)

This request is to acquire a best and final offer from Foxster Opco LLC dba CTS Software for Transit Software Solution. The offer should integrate the previous response to the Request for Proposal 54-12008772-CM and any changes listed below. Any individual vendor can receive a different number of requests for BAFOs than other offerors.

NOTE: This bid 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. Bidders 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.

In accordance with **RFP 54-12008772-CM**, the order of precedence will be as follows: Best and Final Offers, special terms and conditions specific to the RFP, Specifications of the RFP, the Department of Information Technology's Terms and Conditions, and the agreed portion of the awarded Vendor's offer.

The Parties agree to the following:

A. Clarification(s): The following contents of the Request for Clarification - One (1) document issued on December 14, 2023 and signed containing responses submitted by Foxster Opco, LLC, (Attachment A to this BAFO) are hereby incorporated into RFP 54-12008772-CM:



Transit Software
Solution Clarificatio

B. Incorporation of the Vendor's Standard Agreement.



CTS Software - Form
Master Services Agree

The Vendor Standard Agreement consists of "TripMaster by CTS Software Master Services Agreement," and includes "Schedule 1, Service Level Agreement" and the "Order". Together, these documents are referred to herein as the "Vendor Agreement," which is Attachment B to this BAFO and is incorporated into this RFP 54-12008772-CM in the manner shown below in Sections B.1. through B.3.

Terms and conditions in the Vendor Agreement may be modified as shown below (i) using strikethroughs to show deletions or underlining to show insertions; (ii) by stating certain phrases or sentences are deleted; or (iii) by stating text is added. Unless shown as modified, a term remains unchanged.

At the outset, the Parties agree that:

1. The term "Agreement" as used in the Vendor Agreement shall mean the contract resulting from this RFP 54-12008772-CM.
2. The term "Order" (Definition 1.4) as used in the Vendor Agreement, as applied or applicable to the State and its agencies shall be understood to mean the contract resulting from this RFP 54-12008772-CM.
3. The watermark "Sample" appearing on the Vendor Agreement shall have no force or effect.
4. "Customer Data" as used in the Vendor Agreement shall mean "Data" and "State Data" as those terms are defined and used in RFP 54-12008772-CM, and the DIT Terms and Conditions applicable to Data and State Data shall be understood to apply to the Customer Data of DROs.
5. Vendor's Order form, attached hereto, shall be subordinate to the Agreement established by RFP 54-12008772-CM and shall be utilized solely for administrative purposes. The terms and conditions in the Order form shall have no force of effect, including but not limited to terms on automatic renewal, payment, and "Complete Agreement." Prices shall be those set forth in Vendor's Response Proposal, Attachment E. The term for an Order shall not exceed the term of the contract for RFP 54-12008772-CM.



CTS Software
Schedule A-Standard

B.1. The following sections of the Vendor Agreement shall have no force or effect and shall be superseded by DIT's Terms and Conditions:

Section 2.1 Orders for Services

Section 2.2 Orders for Devices

Section 2.5 Service Delivery

Section 5. Fees and Payment Terms (inclusive of Sections 5.1 Service Fees, 5.2 Late Fees and 5.4 No Offset)

Section 6. Non-Disclosure and Confidentiality (inclusive of Sections 6.1 through 6.4)

Section 9. Limitation of Liability (inclusive of Sections 9.1 through 9.3)

Section 10.2 Customer Indemnification

Section 10.3 Indemnification Procedures

Section 11.1 Term and Termination (inclusive of Sections 11.1 through 11.3, but excluding 11.1 (a) Termination)

Section 12. General, inclusive of Sections 12.1 Governing Law, 12.3 Conflicting Terms in Customer Purchase Orders, 12.6 Interpretation, 12.7 Severability, 12.8 Entire Agreement, 12.9 Publicity, 12.10 Amendment; Waiver, 12.12 Force Majeure, 12.13 Equitable Relief, and 12.14 No Third-Party Beneficiaries.

B.2 The parties agree that the following sections of the Vendor Agreement shall supersede DIT's Terms and Conditions:

Section 3.2 Usage Restrictions
Section 3.3 Technical Requirements
Section 3.4 Prohibited Use
Section 3.5 Removal of Content
Section 4.1 Reservation
Section 4.2 Access to Hosted Services
Section 4.3 Customer Data, modified as follows:

by deleting the following clause from the second sentence: "and for scenarios including but not limited to data sharing to brokers and clearinghouses on behalf of the Customer."

by adding the following content to the end of the paragraph: Vendor's use of anonymized and de-identified Customer data shall be interpreted with the application of N.C.G.S. §143B-1320 definitions of cybersecurity incident and significant cybersecurity incident, N.C.G.S. §75-61 and §14-113-20(b) definitions of personal information, together with other Applicable Laws. The Parties acknowledge that some such information may include public information pursuant to N.C.G.S. §132-1 et seq., the N.C. Public Records Act, and non-public information or security information pursuant to Article 7 of Chapter 15 of the N.C. General Statutes, e.g. N.C.G.S. §143B-1375 et seq. and the State's NCDIT Security Manual. The Parties agree that the DRO, or the State as may be appropriate, may request use of filters or other technologies to prevent transmission, receipt or collection of information or data consistent with the State's NCDIT Security Manual or other security policies; and that the Parties will negotiate such measures in good faith.

B.3 The parties agree that the following sections of the Vendor Agreement, as modified, shall be superseded by DIT's Terms and Conditions:

Section 2.3 Hosted Services
Section 2.4 Professional Services
Section 2.6 Protection and Use of Customer Data
Section 3.1 Customer Responsibilities, by modifying subsection (a) as follows: Customer will: (a) be responsible for its and its ~~contractors'~~ users' compliance with this Agreement and for all their acts and omissions of as if they were Customer's acts or omissions;"
Section 5.3 Taxes
Section 7. Third Party Services (inclusive of Sections 7.1 through 7.2)
Section 8.1 Mutual Representations
Section 8.2 Services Warranties
Section 8.3 Customer Warranties
Section 8.4 Disclaimer, (inclusive of both subsections (a) and (b)) but modified by removing the following content from subsection (a): "CTS SOFTWARE DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRDPARTY HOSTING CTS SOFTWARE."
Section 10.1 CTS Software Indemnification, modified by deleting subparagraphs (e) and (f), which read as follows: "(e) Customer Data; or (f) Customer's breach of this Agreement, the Documentation, or the applicable Order(s)."
Section 11.1 (a) Termination

Section 12.2 Delay in Performance, 12.4 Notice, 12.5 Assignment, 12.15 Relationship of Parties, 12.16 Counterparts.

Schedule 1, Service Level Agreement, modified by changing "99.0%" to "99.9%".

Brennon Fuqua

Cindy McCleary

Chris Peoples

Director

Chief of Staff

Chief Operating Officer

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Brennon Fuqua
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DocuSigned by:
Cindy McCleary
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DocuSigned by:
Chris Peoples
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