

CITY OF WILMINGTON, NC

BID INVITATION

BIDS ARE DUE: WEDNESDAY, SEPTEMBER 18, 2024 – 3:00 PM

BID NAME: PURCHASE OF A SHOWER TRAILER FOR THE HOMELESS
OUTREACH PROGRAM

PROJECT NO.: N/A

CONTRACT NO.: S7-0824.2

SUBMIT BIDS TO: PURCHASING DIVISION
P. O. BOX 1810
929 NORTH FRONT STREET
WILMINGTON, N. C. 28402-1810
910-343-1069

BIDDER'S NAME: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

LICENSE NUMBER: _____

In order to do business with the city, you must be a vendor. A Vendor Application can be found at <https://www.wilmingtonnc.gov/departments/finance-department/doing-business-with-the-city>.

ADVERTISEMENT FOR BIDS

CITY OF WILMINGTON, NC

**PURCHASE OF A SHOWER TRAILER FOR THE HOMELESS OUTREACH PROGRAM
CONTRACT NUMBER: S7-0824.2**

Pursuant to North Carolina General Statute 143-129, sealed bids addressed to Ellen McGowan, Buyer, P. O. Box 1810, 929 North Front St, 10th Floor, Wilmington, NC 28402, and marked “PURCHASE OF A SHOWER TRAILER FOR THE HOMELESS OUTREACH PROGRAM” will be received until **3:00 p.m., Wednesday, September 18, 2024** at which time they will be publicly opened and read at the Purchasing Division, 929 North Front Street, 1st Floor Lobby – Room 1, Wilmington, NC.

PROJECT DESCRIPTION: The scope of work consists of purchase of a shower trailer for the Homeless Outreach Program.

MBE/WBE/HUB/DBE OBLIGATION:

The City and its contractor agree to ensure that MBE/WBE/HUB/DBE's have the maximum opportunity to participate in the performance of contract and subcontracts financed in whole or in part with City of Wilmington funds provided under this agreement. In this regard, bidders and contractors shall take all necessary and reasonable steps in accordance with N.C.G.S. § 143-128 to ensure that MBE/WBE/HUB/ DBE firms have the maximum opportunity to compete and perform under this bid, any change orders and any subsequent contract. The City of Wilmington and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and/or performance of this contract. A complete copy of the City of Wilmington’s MBE/DBE policy is available for inspection at the Purchasing Manager’s Office.

Questions may be submitted via email to Captain Thomas Tilmon, Thomas.Tilmon@wilmingtonnc.gov. The deadline for submitting questions regarding this ITB is September 4, 2024 by 2 p.m.

A complete copy of the City of Wilmington’s MBE/WBE policy is available for inspection at the Purchasing Manager’s Office.

Specifications and Bid Documents are available for review and/or pick up at the Office of the Purchasing Manager, 929 North Front Street, Wilmington, NC. If you would like the bid documents emailed to you, you may request them by contacting Ellen McGowan by email, ellen.mcgowan@wilmingtonnc.gov, or by phone (910) 343-1069.

The City of Wilmington does not discriminate on the basis of race, sex, color, age, national origin, religion or disability in its employment opportunities, programs, services, or activities.

Bids for this project shall be guaranteed by all bidders for a period of 90 calendar days following the bid opening.

THE CITY OF WILMINGTON RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

Daryle L. Parker
Purchasing Manager
August 21, 2024

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AFFIDAVIT AND CERTIFICATE OF
NON-COLLUSION, NON-SUSPENSION AND NON-CONVICTION

The undersigned, being first duly sworn, deposes and says:

1. I understand that for the purposes of this affidavit, the term "bidder" shall include the person(s), firm(s), or corporation(s) signing this affidavit, the undersigned's subcontractor(s), subsidiary(ies) and affiliate(s) and any officer, director, employee or agent of the bidder; and the term "conviction" shall include guilty pleas, pleadings of nolo contendere and similar pleas.

2. This Affidavit and Certificate is made in accordance with Article 3 of Chapter 133 of the North Carolina General Statutes; I certify that this proposal is made without prior understanding, agreement, or connection with any person(s), firm(s), or corporation(s) making bids or proposals; I further certify that the bidder has not entered into any agreement with any other bidder or prospective bidder or with any other person(s), firm(s) or corporation(s) relating to the price named in said proposal, nor any agreement or arrangement under which any person(s), firm(s) or corporation(s) is to refrain from bidding, nor any agreement or arrangement for any act or omission in restraint of free competition among bidders; I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards; and I further certify that the bidder will abide by all terms of this bid or proposal.

3. The bidder is not suspended or debarred from bidding by any federal or state governmental agency that is providing funds for this contract.

4. The bidder is not presently charged in an indictment or information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or any similar charges in any federal court or a court of this or any other state.

5. The bidder, within one year immediately preceding the date of this affidavit, has not been convicted of charges or engaging in any conspiracy, combination, or other unlawful act in restraint of trade or similar charges in any federal court or a court of this or any other state.

6. If, during the time of this proposal, from the date advertised to the date bids are opened, the bidder is indicted or convicted of bid-rigging, I understand this proposal shall be rejected and not considered for award.

7. I hereby affirm that all information contained in this affidavit is true, correct, accurate and complete, and any untrue, incorrect, inaccurate or incomplete statements will result in the disqualification and rejection of this proposal. I certify that I am authorized to sign this bid and to make the representations set forth herein on behalf of myself and the bidder.

This the _____ day of _____, 20__.

COMPANY NAME _____

BY: _____
(Owner, Partner, or Corporate President, Vice President or Assistant Vice President only)

ATTEST:

(Secretary, Assistant Secretary,
Cashier or Assistant Cashier only)

(CORPORATE SEAL)

(TO BE EXECUTED ON BEHALF OF THE CONTRACTOR)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that
(Name)

_____ personally came
(Name of Secretary, Assist. Sec., Cashier, Assist. Cashier)

before me this day and acknowledged that he (she) is _____
(Secretary, Assist. Sec.,

_____ of _____, a
Cashier, Assist. Cashier) (Name of Corporation)

corporation, and that by authority duly given and as the act of the corporation, the foregoing Affidavit

was signed in its name by its _____,
(President, Vice President, Assist. Vice President)

sealed with its corporate seal, and attest by himself (or herself) as its

(Secretary, Assist. Sec., Cashier, Assist. Cashier)

WITNESS my hand and official seal, this the _____ day of _____, 20__ .

Notary Public

My Commission Expires: _____ (NOTARY SEAL)

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AFFIDAVIT of COMPLIANCE
with N.C. E-VERIFY STATUTES

I, _____ (hereinafter the "Affiant"), duly authorized by
and on behalf of _____ (hereinafter the "Employer") after
being first duly sworn deposes and says as follows:

1. I am the _____ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3. _____ Employer employs 25 or more employees in the State of North Carolina, and is in compliance with the provisions of N.C. Gen. Stat. §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.

_____ Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. Gen. Stat. §64-26.
4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. Gen. Stat. §64-26.
5. Employer shall keep the City of Wilmington informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina General Statutes.

Further this affiant sayeth not.

This the _____ day of _____, 20____.

Affiant

STATE OF NORTH CAROLINA
COUNTY OF _____

Sworn to and subscribed before me, this the _____ day of _____, 20____.

Notary Public

[NOTARY SEAL]

My commission expires: _____

GENERAL SPECIFICATIONS
&
INSTRUCTIONS TO BIDDERS

Scope

It is the intent of this Invitation to obtain bids for the purchase of a shower trailer for the Homeless Outreach Program., as outlined in the Scope of Work. You are requested to submit your bid on the enclosed Bid Sheet and return the entire package to Ellen McGowan, Buyer, City of Wilmington, Post Office Box 1810, 929 North Front St., 10th Floor, Wilmington, North Carolina 28402-1810. Bids must be received no later than Wednesday, September 18, 2024 by 3:00 pm. at which time they will be publicly opened and read at the Purchasing Division, 929 North Front Street, 1st Floor Lobby – Room 1, Wilmington, NC.

Marking of Envelopes

Bids must be contained in a sealed envelope, plainly marked, showing the name, Invitation to Bid number, date, time (if time is specified) and the bidder's name. Any company submitting a "No Bid" in response to an Invitation to Bid should clearly mark the outside of the envelope.

Late Bids Will Not Be Considered

Bids received after the due date and time will not be considered.

Compliance with Specifications

Your bid must be in strict compliance with the specifications. The City of Wilmington reserves the right to allow or disallow minor deviations from the specifications in order to purchase what is best for the City from a standpoint of quality, cost and service to be rendered.

Warranty

In submitting a bid, the bidder warrants that all goods furnished shall be free from all defects and shall conform in all respects to the Specifications established herein. Unless otherwise specified all items shall be guaranteed for a minimum of one (1) year against defects in material and workmanship. At any time during that period, if a defect should occur in any item, that item shall be repaired or replaced by the seller at no obligation to the buyer except where it can be shown that the defect was caused by misuse. The bidder expressly warrants that all items bid are fit and sufficient for their intended purpose. If the specifications contain a statement of the particular purpose for which the goods will be used, the goods offered by Bidder shall be fit for this purpose.

Shipping

All prices are to be quoted F.O.B. delivered. Risk of loss and/or damage shall be upon the seller until such time as the goods have been physically delivered and accepted by the buyer.

Unit Prices to Prevail

Prices shall be submitted on per unit basis by line item. In the event of a disparity between the unit price and the extended price, the unit price shall prevail.

Price Corrections

All prices and notations shall be written in ink or typed. Changes or corrections made on the bid form must be made by striking through instead of using a liquid cover product and initialed by the individual signing the bid page. No corrections will be permitted once bids have been opened.

Withdrawal of Bids

Bids may be withdrawn at any time prior to the due date and time specified upon written or personal request of the bidder. No quote may be withdrawn for a period of thirty (90) days after the scheduled opening time (if the time is specified) and date. Negligence on the part of the bidder shall not constitute a right to withdraw the quote after the bids have been opened.

Time for Delivery

The time for delivery must be stated in calendar days on the Proposal Sheet and may be a factor in making awards, price notwithstanding.

Point of Delivery

The point of delivery shall be specified on the Purchase Order.

Rejection of Bids

The City reserves the right to reject any and all bids.

Award

Award shall be made to the lowest responsible bidder taking into consideration quality, performance and time specified in the bid for the performance of the contract. Firms must be registered with the North Carolina Secretary of State or hold a Certificate of Authority to do business in the State of North Carolina.

If the business operates under an assumed name, what is the assumed name? Has a certificate of assumed name been filed in the New Hanover County Registry? _____

If so, please provide the recording information. Deed Book _____ at Page _____.

The City of Wilmington shall not be responsible for any oral instructions made by its employees or officers of the City in regards to the bidding instructions, drawings, specifications or contract documents.

Brochures and Literature

Your proposal should be accompanied by descriptive literature marked indicating the exact item(s) bid upon. The term "as specified" will not be acceptable.

Responsibility of Compliance with Legal Requirements

The bidder's products, service and facilities shall be in full compliance with any and all applicable state, federal, local, environmental and safety laws, regulations, ordinances and standards or any standards adopted by nationally recognized testing facilities regardless of whether or not they are referred to in this invitation.

Taxes

The City of Wilmington is exempt from and will not pay federal taxes. An exemption certificate will be furnished upon request. North Carolina and local sales tax shall be shown as a separate item. Sales tax will not be a consideration in the award.

Terms and Conditions

Payment will be made by the City of Wilmington within 30 days after receipt of an approved invoice. **Terms and Conditions attached to the bid by the bidder may render the bid non-responsive and may be rejected by the City of Wilmington.**

Terms and Conditions included herein are an integral part of the contract document and shall prevail unless changes or attachments are agreed to in writing by the City of Wilmington prior to the due date and time of the opening of the Bids.

Validity of Bids

Bids shall remain open and valid for a period of ninety (90) days from the due date specified in the Invitation to Bid.

CONTRACT FOR EQUIPMENT

THIS CONTRACT, (hereinafter the "Contract") is made and entered into on the date executed by all parties by and between the City of Wilmington, a North Carolina municipal corporation, hereinafter referred to as the "CITY," and _____ hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

1. Purpose of Contract

(a) The CITY hereby agrees to purchase the goods listed below from the CONTRACTOR and CONTRACTOR agrees to provide the goods so listed to CITY as ordered in accordance with the provisions of this contract.

(b) Contract Documents. This contract consists of this Contract for Equipment between the City of Wilmington, North Carolina and _____ ITB dated _____, and the following contract documents, all of which are by this reference incorporated herein and made a part of this Contract. The parties agree that only the terms and conditions outlined in this Agreement, not those described or referenced by any of the following contract documents, shall apply unless explicitly stated otherwise in the body of this Agreement.

(a) _____ ITB dated _____

2. Goods to be provided

(a) Purchase of a shower trailer for the Homeless Outreach Program, as listed in the ITB.

3. Delivery

CONTRACTOR agrees to deliver to the specified point of delivery the equipment set forth above Item 2 on or before ____ days from the receipt of the order. CONTRACTOR acknowledges that the failure to deliver the item as specified shall give the CITY the right to terminate this contract.

4. Price

CONTRACTOR will provide the equipment at the following price:

_____, (\$ _____)

5. Contractor Submissions and Payment

- (a) The CONTRACTOR shall submit an invoice for the equipment upon delivery.
- (b) Payments shall be made by the City within 30 days after receipt of an approved invoice.

6. Representatives of the Parties

_____, is designated as the CITY's contract administrator for this Agreement. The contract administrator shall be responsible for monitoring the CONTRACTOR's performance, coordinating the CONTRACTOR's activities, approving all administrative requests by the CONTRACTOR and approving all payments to the CONTRACTOR pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

 City of Wilmington
 P.O. Box 1810
 Wilmington, NC 28402-1810
 Phone: _____
 Email: _____

_____ shall be the CONTRACTOR's representative for this Agreement. Any notice required to the CONTRACTOR under this Agreement shall be sufficient if mailed to the CONTRACTOR by certified mail as indicated below:

7. Increases or Reductions of Quantities

The unit price shall not vary, notwithstanding any increase or reduction in the quantities to be delivered hereunder; and no claims for damages shall be made by or allowed to the CONTRACTOR by reason or such increase or reduction.

8. Inspection

CITY shall receive and shall inventory and inspect the equipment delivered. CITY shall determine whether the quality of said equipment is in accordance with the specifications as referenced herein. CITY is authorized to reject equipment in contravention of this contract and of the said specifications; and CONTRACTOR, at his own cost and expense, shall remove such rejected equipment upon direction of the CITY.

9. Default Provisions

(a) The CITY may, subject to the provisions of Paragraph (c) below, by written notice of default to the CONTRACTOR, terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the CONTRACTOR fails to make delivery of the supplies or equipment or to perform the services within the time specified herein or any extension granted by CITY thereof; or

(2) If the CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with the terms, and in either of these two circumstances does not cure such failure within a period of ten days (or such other period as the Purchasing Manager may authorize in writing) after receipt of notice from the Purchasing Manager specifying such failure.

(b) In the event the CITY terminates this contract in whole or in part, as provided in Paragraph (a) of this clause, the CITY may procure, upon such terms and in such manner as the Purchasing Manager may deem appropriate, supplies or equipment similar to those so terminated, and the CONTRACTOR shall be liable to the CITY for any excess costs for such similar supplies or equipment; provided, that the CONTRACTOR shall continue the performance of this contract to the extent not terminated under provisions of this clause.

(c) The CONTRACTOR shall not be liable for any excess of costs if acceptable evidence has been submitted to the Purchasing Manager that failure to perform this contract was due to causes beyond the control and without the fault or the negligence of the CONTRACTOR.

10. Disputes

Except as otherwise provided in this contract, any dispute concerning a fact arising under this contract which is not disposed of shall be decided after hearing by the Purchasing Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The decision of the Purchasing Manager shall be final and binding unless the same is fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. Nothing herein shall be construed as making final and binding any decision of the Purchasing Manager on a question of law.

11. Insurance Requirements

(a) The amount of insurance to be provided for all coverages listed under this section shall be not less than \$1,000,000.00, unless otherwise specified, per occurrence for claims arising from bodily injury and/or property damage, including accidental death which may arise directly or indirectly from CONTRACTOR'S performance of work under this contract. The CONTRACTOR shall be responsible for any liability directly or indirectly arising out of work performed under this contract by a subcontractor which liability is not covered by the subcontractor's insurance.

(b) The CONTRACTOR shall maintain during the life of this contract WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE covering all of the CONTRACTOR'S employees to be engaged in the work under this contract, providing the required statutory benefits under North Carolina Workers Compensation Law, and Employers Liability Insurance providing limits at least in the amount of \$500,000/500,000/500,000 applicable to claims due to bodily injury by accident or disease. Whenever work under this contract includes exposure to claims under the U. S. Longshoremen's and Harborworker's Act, such coverage shall be provided by appropriate endorsement to this policy. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.

(c) The CONTRACTOR shall take out and maintain during the life of this contract COMMERCIAL GENERAL LIABILITY INSURANCE, including coverage for INDEPENDENT CONTRACTOR OPERATIONS, CONTRACTUAL LIABILITY assumed under the provisions of this contract, PRODUCTS/COMPLETED OPERATIONS LIABILITY and BROAD FORM PROPERTY

DAMAGE LIABILITY insurance coverage. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work to be performed involves these exposures. The CITY shall be named as an additional insured under this policy. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of \$1,000,000, Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.

(d) The CONTRACTOR shall take out and maintain during the life of this agreement AUTOMOBILE LIABILITY INSURANCE with a limit of not less than \$1,000,000 each accident. Such coverage shall be written on a comprehensive form covering owned, non-owned and leased vehicles.

(e) The CONTRACTOR shall furnish the schedule of insurance carried under this contract in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date and expiration date of all policies. This Certificate shall be inserted when the contract is signed by the CONTRACTOR, and a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents. The insurance carrier or its agent shall also certify on these documents that it will notify the CITY by registered mail at least twenty (20) days prior to any cancellation or non-renewal of these coverages.

12. Subcontracting

No subcontracting will be allowed under this contract without prior approval of the CITY.

13. Conflict of Interest

No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this contract.

14. Findings Confidential

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONTRACTOR under this contract are the property of the CITY. The CONTRACTOR agrees that any such documents shall not be made available to any individual or organization other than appropriate CITY officials without prior written approval of the CITY. Nothing contained in this paragraph shall be construed to prevent the CONTRACTOR from making information, reports and documents available to those individuals or firms directly concerned with the project involved with prior written contract of the CITY.

15. Binding Effect

This contract shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

16. Continuing Obligation

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the contract.

17. Reference

Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the contract.

18. Minority Business Enterprise (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

(a) Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.

(b) Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.

(c) Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.

(d) Provide technical assistance as needed.

(e) Promulgate and enforce contractual requirements that the general contractor on all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

(f) CONTRACTOR shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. CONTRACTOR shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONTRACTOR to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business with at least fifty-one (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty-one (51%) percent owned and controlled by women who exercise actual day-to-day management.

CONTRACTOR shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. CONTRACTOR agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is in compliance.

19. Immunity Not Waived

This contract is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the CITY'S actual cost and neither party intends to waive its sovereign immunity by reason of this contract.

20. Saving Clause.

If any section, subsection, paragraph, sentence, clause, phrase or portion of this contract is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

21. Amendments.

This contract shall not be modified or otherwise amended except in writing signed by the parties.

22. Non-Discrimination.

CONTRACTOR will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this contract because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONTRACTOR will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this contract and may result, at CITY'S option, in a termination or suspension of this contract in whole or in part.

23. Taxes.

The City of Wilmington is exempt from and will not pay federal taxes. An exemption certificate will be furnished upon request. The City of Wilmington is NOT exempt from sales tax.

24. Interpretation/Governing Law.

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

25. Authority to Act

Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant and represent that the CONTRACTOR is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the CONTRACTOR has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONTRACTOR were authorized to do so.

26. Non-Appropriation.

In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONTRACTOR of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

27. Other Laws and Regulations.

CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONTRACTOR will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. § 681.1 and in accordance with N.C.G.S. §132-1.10 and §75-65.

28. No Publicity.

No advertising, sales promotion or other materials of the CONTRACTOR or its agents or representations may identify or reference this Contract or the CITY in any manner absent the written consent of the CITY. Notwithstanding the forgoing, the parties agree that the CONTRACTOR may list the CITY as a reference in responses to requests for proposals, and may identify the CITY as a customer in presentations to potential customers.

29. CITY Not Liable For Special or Consequential Damages.

The CITY shall not be liable to the CONTRACTOR, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the CITY, or any other consequential, indirect or special damages or lost profits related to this Contract.

30. Public Records.

CONTRACTOR acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C.G.S. § 132) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

If CONTRACTOR believes documents related to the Agreement contain trade secrets or other proprietary data, CONTRACTOR must notify the CITY and include with the notification a statement that explains and

supports CONTRACTOR'S claim. CONTRACTOR also must specifically identify the trade secrets or other proprietary data that CONTRACTOR believes should remain confidential.

In the event the CITY determines it is legally required to disclose pursuant to law any documents or information CONTRACTOR deems confidential trade secrets or proprietary data, the CITY, to the extent possible, will provide CONTRACTOR with prompt written notice by certified mail, fax, email, or other method that tracks delivery status of the requirement to disclose the information so CONTRACTOR may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for CONTRACTOR to seek court ordered protection or other legal remedies as deemed appropriate by CONTRACTOR. If CONTRACTOR does not obtain such court ordered protection by the expiration of said time period, the CITY may release the information without further notice to CONTRACTOR.

31. No Presumption.

None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

32. Federal Contract Provisions

A. Federal Applicability

The Work to be performed under this Contract will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal Government determines otherwise. This Section identifies the Federal requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the Federal awarding agency's terms and conditions.

The Work performed under this Contract will be financed, in whole or in part, by funding provided by programs of the Federal Emergency Management Agency (FEMA). Contractor shall at all times comply with all applicable FEMA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

B. Civil Rights Requirements

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 USC 5323(h)(3) by not using any Federal assistance to support procurements using exclusionary or discriminatory specifications.

Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination

In accordance with 41 CFR 60-1.4, during the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will comply with Section 504 of the Rehabilitation Act of 1973, as amended.

(7) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant

thereto, and will permit access to books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(8) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (9) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC 623 through 634 and the implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal awarding agency may issue.

3. Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Educations Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, that prohibit discrimination on the basis of sex.

4. Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

5. Access to Services for Persons with Limited English Proficiency

The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 USC 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

6. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 USC 290dd through 290dd-2, and any amendments thereto.

7. Other Nondiscrimination Laws

The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

8. Inclusion in Subcontracts

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

C. Davis-Bacon & Copeland Anti-Kickbacks Acts.

1. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

2. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 USC 3141- 3144, and 3146-3148) and the requirements of 29 CFR pt. 5 as may be applicable. The Contractor shall comply with 40 USC 3141-3144, and 3146-3148 and the requirements of 29 CFR pt. 5 as applicable.

3. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

4. Contractors are required to pay wages not less than once a week.

5. Compliance with the Copeland “Anti-Kickback” Act.

a. Contractor. The Contractor shall comply with 18 USC 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

D. Contract Work Hours & Safety Standards Act

1. Overtime requirements.

No contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in paragraph above of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the U.S. for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in the paragraph above of this section, in the sum of twenty-seven dollars (\$27.00) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in the paragraph above of this section.

3. Withholding for unpaid wages and liquidated damages.

The CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in the paragraph above of this section.

4. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in the paragraphs above of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the paragraphs above of this section.

E. Right to Inventions Made Under a Contract or Agreement—NOT APPLICABLE

F. Clean Air

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq. The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding one hundred and fifty thousand dollars (\$150,000.00) financed in whole or in part with Federal assistance.

G. Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq. The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding one hundred fifty thousand dollars (\$150,000.00) financed in whole or in part with Federal assistance.

H. Energy Conservation

The Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

This requirement extends to all third party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

I. Government-Wide Debarment & Suspension

1. This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 CFR 180.995) or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935).

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may

arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

The requisite Debarment and Suspension Certification is included as ATTACHMENT A and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

J. Byrd Anti-Lobbying

The Contractor agrees to comply with the provisions of Title 31 USC 1352, The Byrd Anti-Lobbying Amendment, as in force or as it may hereafter be amended. The Contractor and all subcontractor tiers shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the CITY.

The Contractor further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

The requisite "Lobbying Certification" is included as ATTACHMENT B and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

K. Recovered Materials

The Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 USC 6962, including but not limited to the regulatory provisions of 40 CFR Part 247 and Executive Order 12873, as they apply to the procurement of the items designated in Part B of 40 CFR Part 247.

This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

L. Conflict of Interest

No employee, officer, board member, or agent of the CITY or the Contractor shall participate in the selection, award, or administration of a contract supported by FEMA funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employees or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

M. Disadvantaged Business Enterprises (DBE)

The CITY promotes policies which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. Disadvantaged Business Enterprises, as defined in 2 CFR § 200.321, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The Contractor agrees to solicit small and minority business and women's business enterprises whenever they are potential sources.

When economically feasible, the Contractor agrees to divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. Where the requirement permits, the Contractor agrees to establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises. As appropriate, the Contractor agrees to use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

N. Access to Records and Reports and Record Retention

The record keeping and access requirements extend to all third party contractors and their contracts at every tier. Under 49 USC 5325(g) and 2 CFR 200.336, FEMA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FEMA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records.
 - a. The Contractor agrees to provide sufficient access to FEMA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
 - b. The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 USC 5325(g) and 2 CFR 200.336.
 - c. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FEMA Administrator or authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.
 - d. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. Access to the Sites of Performance. The Contractor agrees to permit FEMA and its contractors access to the sites of performance under this contract as reasonably may be required.

O. Termination or Cancellation of Contract

1. Termination without Cause: City shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party. Upon receipt of Notice of Termination, the Contractor shall immediately discontinue all services directed (unless the Notice directs a date specific for services to terminate). As soon as practicable after receipt of a written Notice of Termination without cause, the Contractor shall submit a statement to the City showing in detail the Work performed under this Contract through the date of termination. The City shall pay the Contractor for Work rendered through the date of termination.
2. Termination for Cause: City shall have the right to terminate this Contract because of the failure of the Contractor to fulfill its obligations under the Contract by giving thirty (30) days' written notice to Contractor. The Notice of Termination shall specify the nature, extent, and effective date of the termination.

For all contracts in excess of \$10,000, this clause extends to all third party contractors, and their contracts at every tier, and subrecipients and their subcontracts at every tier, as referenced in 2 CFR 200.339 and 2 CFR Part 200, Appendix II (B).

P. Breach of Contract Rights and Remedies

All contracts in excess of \$250,000 shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate as provided in 2 CFR 200.326 and 2 CFR part 200, Appendix II (A). The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier. For purposes of this Contract, breach shall include the Contractor and any subsequent named subcontractor.

1. Rights and Remedies of the Owner - The City shall have the following rights in the event that the Owner deems the Contractor guilty of a breach of any term under the Contract. City
 - a. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
 - b. The right to cancel this Contract as to any or all of the work yet to be performed;
 - c. The right to specific performance, an injunction or any other appropriate equitable remedy; and
 - d. The right to money damages.
2. Rights and Remedies of the Contractor - Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the City directs Contractor to do so) or to suspend or abandon performance.
3. Remedies - Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

4. If there is credible evidence that a Third Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 USC 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of the Federal awarding agency is required.

Q. Copyrights and Rights in Data. NOT APPLICABLE

R. Cost Principles. Any adjustment to the Contractor's compensation, including requested reimbursable expenses, shall include only costs and other compensation that are allowable, allocable, and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable, and reasonable under 2 CFR 200 Subpart E—Cost Principles and any implementing guidelines or regulations issued by the Office of Management and Budget (OMB). Contractor further agrees to provide adequate documentation to support costs (direct and indirect) charged to the Federal award.

This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

S. DHS Seal, Logo, and Flags. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

T. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 USC Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract

U. F.A.R. Compliance. Any adjustment to the Contractor's compensation under the Contract shall include only costs and other compensation that are allowable, allocable and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable and reasonable under the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System, 48 CFR, Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.

V. No Federal Government Obligations to Third Parties

The No Obligation clause extends to all third party contractors and their contracts at every tier.

The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

[SEAL]

ATTACHMENT B

CERTIFICATION REGARDING LOBBYING

(To be submitted with all offers exceeding \$100,000; must be executed prior to Award)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 1352, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Date _____

Printed Name and Title of Contractor's Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary Public _____

My Appointment Expires _____

[SEAL]

IN WITNESS WHEREOF, the CITY has caused this contract to be duly executed in its name and the CONTRACTOR has caused this contract to be duly executed in its name and behalf.

CITY OF WILMINGTON, NORTH CAROLINA

By: _____
Anthony N. Caudle, City Manager

Date: _____

WITNESS:

Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

Gina Essey, Assistant City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This ___ day of _____, 20__.

Jennifer R. Maready, Finance Director

Project Account _____

Org. _____ Obj. _____ Project _____

Amount \$ _____

Requisition/PO# _____

Federal ID # 56-6000239

By: _____
President/Vice President

ATTEST:

Secretary, Assist. Secretary, Trust Officer

(CORPORATE SEAL)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that the corporation's Secretary, Assist. Secretary or Trust Officer, Mr./Mrs./Ms. _____ personally came before me this day and acknowledged that he (she) is the _____ of _____ ITB dated _____, a Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, Vice President, or Assist. Vice President, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and attested by himself (herself) as its Secretary, Assist. Secretary or Trust Officer.

WITNESS my hand and official seal this the _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

[SEAL]

INSURANCE CERTIFICATES

(Staple Insurance Certificates here, as required in Section 11. of the Contract.)

BID SHEET
ITB NO. S7-0423.2

The undersigned hereby certifies that this Bid is made without prior understanding, agreement or connection with any person(s), firm(s) or corporation(s) make quotes or Bids. The bidder further certifies that (s) he is not suspended or debarred from bidding by any federal, state, or local agency and that, if awarded this contract, (s) will be abide by all specifications, provisions and conditions contained in the Invitation to Bid.

Scope of Work

The City of Wilmington is seeking bids for the purchase of a shower trailer for the Homeless Outreach Program.

Homeless Outreach Shower Trailer Requirements:

Platform: 30x8 foot box trailer tongue towed.

Water Tank: 150 Gallon

Waste Water: 250 Gallon w/ pump out

City Water Supply: via garden hose inlet

Water pump and 32 gallon pressure tank provided by vendor which is sufficient enough to pressurize system from onboard water tanks when not on city water

Instant Hot Water via Propane Heater

100# Propane Tank/Mount, plumbed into Instant Hot Water System

6 shower Stalls w/ hot and cold adjustable water temperature

Each stall shall have 2 accessory shelves which permit holding soap/shampoo containers.

Mechanical Room w/ access to water heater, storage tanks, plumbing

15 BTU Air Conditioning System

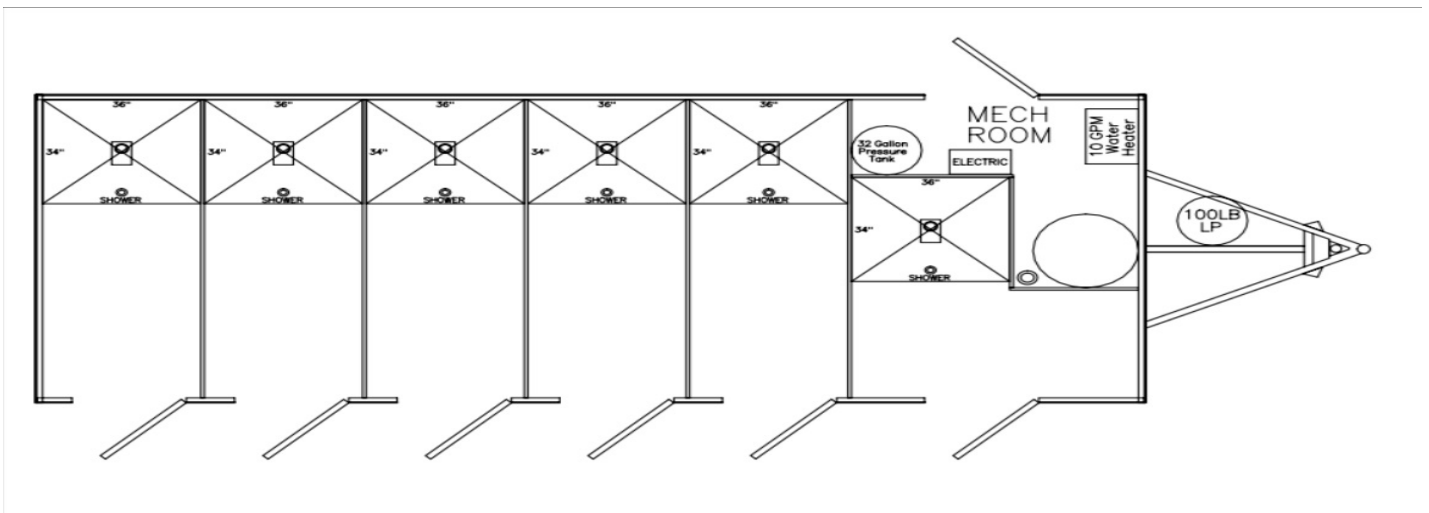
Electric Tongue Jack powered from onboard battery

At least one GFCI outlet should be in each shower room, outside the shower stall on a shelf.

Onboard 7 kw generator to power electrical outlets/onboard AC Unit, and pump.

Electric Intake Panel, where trailer can be powered by external generator.

Power Supply/Cords: (1) 30 amp cords with 20 amp adapters



BID SUBMITTAL
ITB Number S7-0423.2

In accordance with the terms conditions and specifications, I/we, as authorized signatory to commit the firm, do hereby accept in total all the terms and conditions stipulated and referenced in this ITB document and hereby submit the following prices for the Purchase of one (1) laundry trailer.

<u>PRICING FOR ONE (1) SHOWER TRAILER FOR THE HOMELESS OUTREACH PROGRAM</u>		
<u>Item</u>	<u>Quantity</u>	<u>Pricing</u>
Shower Trailer	1 each	\$

Bid pricing must include all shipping charges to Wilmington, NC. Tax must be listed separately.

Warranty: (minimum 1 year) _____

Anticipated Delivery Date: _____

The undersigned acknowledges receipt of any issued Addendums to this Project by recording the Addendum number and date acknowledged below:

Addendum #1: _____ **Dated:** _____
Addendum #2: _____ **Dated:** _____

If you are offering pricing which is based on other entity or agency solicitation pricing, clearly state so and include a copy of the applicable solicitation with your submittal.

If you are not submitting a quotation, please indicate “NO BID” and return the cover memo.

BY: (print & sign) _____

DATE: _____ **TITLE:** _____

COMPANY: _____

ADDRESS: _____

PHONE NUMBER: _____

EMAIL: _____

Please include this bid submittal page, completed and signed proposers certification and signed non-collusion affidavit, along with any specifications or additional attachments with your bid submittal.

ITB NO. S7-0724.2
PROPOSER'S CERTIFICATION

Proposer's Signature: _____ **Date:** _____

By signing above, I certify that I have carefully read and fully understand the information contained in this Bid, that I have the capability to successfully undertake and complete the responsibilities and obligations of the Invitation to bid being submitted, and that I have the authority to submit this RFP on behalf of my business. **It is the proposer's responsibility to assure that all addenda have been reviewed prior to proposal submission.**

BY (Printed): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

The proposer supplies the information recorded below for use in the preparation of the contract documents, in event of contract award:

1. Please indicate type of business organization:

- (a) Proprietorship _____
- (b) Partnership _____
- (c) Corporation _____
- (d) Limited Liability Co. _____

2. If business is a Corporation, please answer the following questions:

Name and title of officers, authorized by Corporate Resolution, who will execute the contract on behalf of corporation (generally President and Secretary).

Firm is incorporated in what state?

If firm is a foreign corporation, does firm have a certificate of authority from the North Carolina Secretary of State?

3. If business is a Partnership, please answer the following:

Name in full or all general partners and addresses:

Is this a limited or general partnership? _____

If a limited partnership, what is state of registration? _____

If business is a foreign limited partnership, does business have a certificate of authority from the North Carolina Secretary of State? _____

4. If business is a Proprietorship, please answer the following:

Name of owner: _____

5. If business is a limited liability company, please answer the following:

List the names and title of managers or member-managers who will execute the contract on behalf of the company? _____

What is state of organization? _____

If business is a foreign limited liability company, does business have a certificate of authority from the North Carolina Secretary of State? _____

6. For all bidders:

If the business operates under an assumed name, what is the assumed name?

Has a certificate of assumed name been filed in the New Hanover County Registry? If so,

please provide the recording information:

Deed Book _____ at Page _____.