



INSTRUCTIONS TO BIDDERS

1. **READ, REVIEW, AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **DEFINITIONS:**
 - **THE COUNTY:** Is the County of Wake, North Carolina and its agencies.
 - **OFFEROR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
3. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the Terms and Conditions. The County objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**

By execution and delivery of this document, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
4. **EXECUTION:** Failure to sign the bid response will render bid invalid.
5. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) Terms and Conditions, and (4) Instructions to Bidders.
6. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, bidder's offer shall be valid for 60 days from the date of bid opening. Preference may be given to bids allowing not less than 60 days for consideration and acceptance.
7. **PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
8. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in the bid document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications

covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.

10. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this County to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective.

We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use.

Companies are strongly urged to bring to the attention of the purchasers those products or packaging they offer which have recycled content and that are recyclable.

11. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of the bid document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from Wake County Procurement Services. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.

12. **ACCEPTANCE AND REJECTION:** The County reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. If an extended price is obviously in error, the unit price will control.

13. **REFERENCES:** The County reserves the right to require a list of users of the exact item offered. The County may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.

14. **TAXES:**

- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
- **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

15. **AWARD OF CONTRACT:** The County will consider such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the County to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the County or the bidder, the County reserves the right to accept any item or group of items on a multi-item bid. In addition, Wake County reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by Wake County to be pertinent or peculiar to the purchase in question.

16. **HISTORICALLY UNDERUTILIZED BUSINESSES:** The County invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

17. **CONFIDENTIAL INFORMATION:** The County assumes no responsibility for confidentiality of information offered in a proposal. The RFB/RFP does not intend to elicit proprietary information. However,

if proprietary information is submitted as part of the submittal, the information is to be clearly labeled as such. Proposals are not subject to public inspection until after the contract award. Wake County will share any information submitted in response to this RFP or process with any person(s) or firm(s) involved in the review and evaluation process. **Proprietary or confidential information must be clearly labeled as such at the time of initial submission and to the extent provided by N.C.G.S. Chapter 132, will not be made available for public inspection. In the event that a request for inspection is made under public records law, the Proposer will be notified of the request and may participate in any subsequent civil action to compel disclosure of confidential information.**

18. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the bidder's expense. Written request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become the property of the County. Each individual sample must be labeled with the bidder's name, bid number, and item number. A sample, on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
19. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
20. **Iran Divestment Act:** By signing the agreement or acceptance of the contract/purchase order or by submission of any bid, proposal, etc, vendor, contractor certifies that as of the date of execution of this agreement or date of receipt of the purchase order, contractor/vendor and/or subcontractors affirm they are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-6e, Iran Divestment Act Certification. Contractor/vendor shall not utilize any subcontractor that is identified on the list.
21. **E-VERIFY:** To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS64-26(a)) relating to the E-Verify requirements.
22. **Federal Uniform Guidance: FEDERAL FUNDS: If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable):**

Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324)

General Terms and Conditions for Goods and Services

1. **Default and Performance:** In the event any equipment, software, or service furnished by the contractor in the performance of any contract awarded by the county should fail to conform to the contract specifications, the County may cancel and procure the articles or services from other sources and hold the Contractor responsible for any excess costs occasioned thereby. The County reserves the right to require performance bond or other acceptable alternative guarantees from the Contractor without expense to the County, if so indicated in the bid. The rights and remedies of the County provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.
2. **Governmental Restrictions:** In the event any governmental restrictions are imposed that necessitate alteration of the material, quality, workmanship, or performance of the items offered prior to their delivery, it shall be the responsibility of the Contractor to notify the County in writing, at once, indicating the specific regulation that required such alterations. The County reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
3. **Availability of Funds:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement. If funds to effect such payment are not available, the Contractor agrees to take back any affected equipment and products furnished under this contract, terminate any services supplied to the County under this contract, and relieve the County of any further obligation thereof.
4. **Taxes:** The County of Wake is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the contractor or on any taxes levied on employee wages. Applicable State or local sales taxes shall be invoiced as a separate item.
5. **Situs:** The place of this contract or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **Governing Laws:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
7. **Inspection at Contractor's Site:** The County reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
8. **Payment Terms:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of goods, whichever is later. Payment terms for services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule. The using agency is responsible for all payments under the contract.
9. **Affirmative Action:** The contractor will take affirmative action in complying with all Federal and State requirements.
10. **Condition and Packaging:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

11. **Standards:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector, which customarily requires identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.
12. **General Indemnity:** The contractor shall hold and save the County of Wake, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the Contractor.
13. **Advertising/Press Release:** The contractor shall not publicly disseminate any information concerning the contract without prior written approval from the County of Wake or its agent.
14. **Patent, Copyright, and Trade Secret Protection:**
 - a. No deliverable(s) produced, in whole or in part, under this contract, shall be the subject of an application for copyright or patent by or on behalf of the Contractor, its employees, agents, officers, assigns, or subcontractor(s). The Contractor, at its own expense, shall defend any action brought against the County to the extent that such action is based upon a claim that the equipment or software supplied by the Contractor, or the operation of such equipment pursuant to a current version of Contractor-supplied operating software, infringes a United States patent, or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the County in any such action. Such defense and payment shall be conditioned on the following:
 - 1) That the Contractor shall be notified within a reasonable time in writing by the County of any such claim; and,
 - 2) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the County shall have the option to participate in such action at its own expense.
 - b. Should the machines, or software, or the operation thereof become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the County shall permit the Contractor, at its option and expense, either to procure for the County the right to continue using the equipment or software, or to replace or modify the same so that they become non-infringing and continue to meet bid specifications. If neither of these options can reasonably be taken, or if the use of such equipment or software by the County shall be prevented by injunction, the Contractor agrees to take back such equipment or software, and refund any sums the County has paid Contractor less any reasonable amount for use or damage and make every reasonable effort to assist the County in procuring substitute equipment or software. If, in the sole opinion of the County, the return of such infringing equipment or software makes the retention of other items of equipment or software acquired from the Contractor under this contract impractical, the County shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such equipment or

software and refund any sums the County has paid Contractor less any reasonable amount for use or damage.

15. **Access to Persons and Records:** Pursuant to N.C. General Statutes, and Federal law, the County Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Contractor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of Wake County Government pursuant to the performance of this contract or to costs charged to this contract. The Contractor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this contract.
16. **Assignment:** No assignment of the contractor's obligations or right to receive payment hereunder shall be permitted. However, upon written request and approval by the issuing purchasing authority, the Agency may:
 - a. Forward the contractor's payment check(s) directly to any person or entity designated by the contractor, or
 - b. Include any person or entity designated by contractor as a joint payee on the contractor's payment check(s).In no event shall such approval and action obligate the County to anyone other than the contractor and the contractor shall remain responsible for fulfillment of all contract obligations.
17. **Termination for Convenience (Service and Indefinite Quantity Contracts Only):** The County may terminate this contract, in whole or in part, by giving 30 days prior notice in writing to the Contractor. Such notice of cancellation, as required herein, shall be transmitted via US Mail, email or fax, with receipt confirmed. The 30 days notice for termination shall begin on the day the receipt is confirmed.
18. **Limitation of Liability:**
 - a. Where equipment is under the County's exclusive management and control, the Contractor shall not be liable for any damages caused by the county's failure to fulfill any County responsibilities of assuring the proper use, management and supervision of the equipment and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the County's intended use.
 - b. The liability amount may be adjusted by the issuing agency based upon a documented total risk assessment, but in no event shall the liability for damages be less than the total value of the contract. The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Contractor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this contract.
19. **Contractor's Liability for Injury to Persons or Damage to Property:**
 - a. The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the County, employees of the County, persons designated by the County for training, or any other person(s) other than agents or employees of the Contractor, designated by the County for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the equipment either at the Contractor's site or at the County's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.

- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Contractor's equipment.
20. **Changes:** This order or contract is awarded subject to shipment of quantities, qualities, and prices indicated by the order or contract, and all conditions and instructions of the order and the contract or proposal on which it is based. Any changes made to this order or contract proposed by the contractor is hereby rejected unless accepted in writing by the County. The County shall not be responsible for goods or services delivered without a written purchase order or authorization from the applicable County purchasing authority.
- Where the County requests a change, the contractor may submit a request for contract adjustment, which shall be in the form of a complete change proposal fully supported by factual information and shall separately identify all increases and all decreases in costs. The request shall be submitted by a senior official authorized to bind the Contractor in a signed contract.
21. **Price Adjustments (Term Contracts Only):** Any price changes, downward or upward, which might be permitted during the contract period, must be general, either by reason of market change or on the part of the Contractor to other customers.
- a. **Notification:** Must be given to the issuing purchasing authority, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
- b. **Decreases:** Shall receive full proportionate benefit immediately at any time during the contract period.
- c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with the county reserving the right to accept or reject the increase or cancel the contract. Such action by the county shall occur not later than 15 days after the receipt of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
- d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.
22. **Transportation:** Transportation of goods shall be FOB Destination. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the County.
23. **Signature Warranty:** Each individual signing warrants that he or she is duly authorized by the Party to sign this contract and bind the Party to the terms and conditions of this contract.
24. **Compliance with Laws:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
25. **Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.
26. **Federal Intellectual Bankruptcy Act:** The Parties agree that Wake County shall be entitled to all rights and benefits of the Federal Intellectual Bankruptcy Act, Public Law 100-506, and any amendments thereto.

