



<b>Request for Quote (RFQ)</b>	<b>Solicitation/Project Number:</b>	102-262
	<b>Date Issued:</b>	February 24, 2025
	<b>Procurement Official:</b>	Heather Maples
	<b>Phone:</b>	828-395-1451
	<b>Email Address:</b>	hmaples@isothermal.edu
	<b>Commodity Code:</b>	204-91 (Servers)
	<b>Requisition Number:</b>	PR12865608

<b>Description:</b>	Isothermal Community College is seeking bids for ExaGrid primary and disaster recovery backup servers with support and maintenance.
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The Term “Offer” Means Your “Bid” or “Proposal” or “Quotation”

<b>SUMIT OFFER BY:</b>	March 10, 2025 at 2:00 PM, EST
<b>NUMBER OF COPIES TO BE SUBMITTED:</b>	One (1) Paper Original
<b>QUESTIONS TO BE RECEIVED BY:</b>	March 3, 2025 at 2:00 PM, EST

<b>Conference Type:</b>	<b>Location:</b>	<b>Date &amp; Time:</b>
N/A	N/A	N/A

**ELECTRONIC RESPONSES ONLY WILL BE ACCEPTED FOR THIS SOLICITATION**

**SUBMIT YOUR OFFER THE ELECTRONIC VENDOR PORTAL:**

<https://evp.nc.gov/>

For a contract to be awarded to you, your company (you) must be a North Carolina registered vendor in good standing. You must enter the vendor number assigned through eVP (Electronic Vendor Portal). If you do not have a vendor number, register at <https://vendor.ncgov.com/vendor/login>

**You must submit a signed copy of this form with your offer. By submitting an offer, you agree to be bound by the terms of the solicitation. You agree to hold your offer open for a minimum of ninety (90) calendar days after the opening date. You affirm that the District's original solicitation document has not been altered in any way. You acknowledge that you have read and understand all requirements, certifications, stipulations, terms, and conditions stated in the solicitation documents.**

**Complete/Formal Name of Vendor:**

**Street Address:**

**P.O. Box:**

**Zip:**

**City & State**

**Telephone Number:**

**Fax Number:**

**Principal Place Of Business Address If Different From Above:**

**Print Name & Title Of Person Signing On Behalf Of Vendor:**

**Vendor's Authorized Signature\*:**

**Date:**

**Vendor eVP#:**

**E-Mail:**

**SECTION INTENTIONALLY LEFT BLANK**

## **SYSTEM SPECIFICATIONS:**

<b>MFG</b>	<b>MFG Part Number</b>	<b>DESCRIPTION</b>	<b>QUANTITY</b>
ExaGrid	EX36-SEC	Disk Capacity: Raw: 96 TB, Useable: 72 TB. 36 TB Full Backup. Includes 1 10 Gigabit Add on Card Disks are encrypted.	1
ExaGrid	EX18-SEC	Disk Capacity: Raw: 48 TB, Useable: 36 TB. 18 TB Full Backup. Disks are encrypted.	1
ExaGrid	EX-10GBE-RJ45	10 Gigabit Ethernet Dual Port RJ45 10GbaseT Option for all ExaGrid models.	2
ExaGrid	EX-5YR-MS-S	Five year support and product maintenance services – Support will be available 5 days a week (Monday-Friday) for 8 hours each day for <b>EX36-SEC</b> <u>and</u> <b>EX18-SEC</b>	1

### **1. Configuration**

- a. Support of the following networking
  - i. 10GBE 10Base-T, Twinax and Optical
  - ii. 25GBE Twinax or Optical
- b. Meets FIPS 142-2 compliance standards for encryption at rest
  - i. Hardware encryption at Rest
- c. Redundancy
  - i. Redundant power supplies, hot swappable
  - ii. RAID6 with a spare, hot swappable

### **2. Backup (Ingest) Performance**

- a. No inline deduplication, write direct to disk in native backup app format
- b. File system optimized for large backup jobs
- c. Integration with advanced backup protocols such as the Veeam Data Mover
- d. Support of CIFS and NFS
- e. The ability to do parallel backup jobs (job concurrency)
- f. The ability to do encryption at the drive level for enhance performance
- g. Ingest performance of 15.5 TB per hour

### **3. Restore Performance**

- a. At a minimum the most recent backup in a native backup application format, non-deduplicated data

### **4. Long term retention**

- a. All data deduplicated with at least a 14:1 deduplication ratio (at 16 retention points) with a preferred deduplication ratio of 20:1
- b. A copy of the most recent backup and all retention data stored in a nonnetwork facing tier
- c. Ability to further deduplicate data that is already deduplicated by the backup application such as Veeam.

### **5. Scale-out**

- a. Compute (memory, processor, networking) adding with each group of Capacity
- b. The ability to maintain a fixed-length backup window as data grows – linear scalability adding compute with capacity
- c. Ability to accommodate at least a 2.6PB full backup in a single system
- d. Must automatically load balance data across all storage for efficient storage use

- e. Must include global data deduplication to ensure the highest deduplication Ratio
- f. Ability to mix and match any age and any size appliance in the scale-out solution to eliminate forklift upgrades

## **6. Disaster Recovery**

- a. Advanced replication between sites
- b. WAN efficiency of approximately 50:1
- c. Ability to cross replicate between sites
- d. Ability to multi-hop (A to B to C) for a tertiary copy
- e. Ability to do major data center spoke and hub for all sites so have a DR target. Spoke and hub must be able to do at least 10 major data centers in a group.
- f. Ability to replicate the first or second DR copy to the cloud including Amazon AWS and Microsoft Azure

## **7. Security**

- a. Ability to encrypt data at rest
- b. Ability to encrypt data at rest at the drive level for performance
- c. Ability to encrypt data over the WAN to DR site including the cloud
- d. Support of secure protocols including SMB signing
- e. Data check summed to ensure data security
- f. IP-based Whitelist
- g. https with TLS Certificates
- h. Secured https://
- i. RBAC (Role-based Access Control)
- j. Two-Factor Authentication (2FA)
- k. Non-network facing tier with a copy of all data
- l. Delayed deletes with a number of days policy to protect data in nonnetwork-facing tier
- m. Immutable data object to guard against encryption events
- n. Separate roles for IT and security
- o. Role protection where one role cannot create or delete the other or change the others' passwords
- p. Alert on large deletes as an early detection sign
- q. Alert on deduplication ratio change as an early detection sign

## **8. Management**

- a. Single user interface to see all appliances and storage in a single view
- b. Integration with Active Directory (AD)
- c. SNMP integration for integration with enterprise management applications

## **9. It is preferable that the solution have advanced backup application integrations as follows:**

- a. Veeam Data Mover
- b. Veeam SOBR

## **10. System Sizing**

- a. Sizing must take into consideration and account for starting data
- b. Data growth for the prescribed years
- c. Backup rotation
- d. Backup retention
- e. Percent of data compressed or encrypted
- f. Disaster recovery copy
- g. Cross replication for disaster recovery
- h. Any and all long-term retention including costs in the cloud if retention data is tiered into the cloud

### 11. Pricing

- a. System pricing must be guaranteed for a period of 5 years
- b. Maintenance and support pricing must be guaranteed for a period of 5 years with a not to exceed a 3% yearly percentage increase
- c. Ability to eliminate forklift upgrades with a scale-out architecture where past and current models can be mixed and matched in single system
- d. Support of an ever-green approach to allowing appliance/storage to be used for its full life without early obsolescence

### 12. Customer Support Must Include

- a. Access all the time to a level 2 support engineer, preferably an assigned L2 engineer
- b. Installation
- c. Basic training
- d. Phone, email, chat support
- e. Health reporting monitoring
- f. All point releases
- g. All full version releases

### 13. Environment

- a. The solution must be able to work with the following environment and properly sized for the criteria listed below.

SITE 1	
Backup Application	Veeam
Full Backup	25TB
Backup Rotation	Daily Incrementals, Weekly Synthetic Fulls
Retention	30 daily incrementals, 8 weekly fulls, 12 monthlies, 3 yearlies
% of Data Compressed	15%
% of Data Encrypted	100%
DR Data sent to	Site 2
Data Growth per Year	10%
Sizing for how many years	5
M&S for How many Years	5

SITE 2	
Backup Application	Veeam
Full Backup	25TB
Backup Rotation	Daily Incrementals, Weekly Synthetic Fulls
Retention	30 daily incrementals, 8 weekly fulls, 12 monthlies, 3 yearlies
% of Data Compressed	15%
% of Data Encrypted	100%
DR Data sent to	From Site 1
Data Growth per Year	10%
Sizing for how many years	5
M&S for How many Years	5

**QUESTIONS:** All questions must be received via email to Heather Maples at hmaples@isothermal.edu by 2:00 PM on March 3, 2025. Addenda addressing Questions will be posted by 4:30 on March 4, 2025.

**NOTICE TO BIDDERS:** Sealed bids for this equipment will be received by Heather Maples, Purchaser at Isothermal Community College, through the electronic vendor portal up to **2:00 PM EST**, on **March 10, 2025**. It is the responsibility of the Contractor to ensure their bid has arrived by date and time specified. No late bids will be accepted.

No bid may be withdrawn after the opening of bids for a period of **90 days**. The Owner reserves the right to reject any or all bids and waive informalities. Bids shall be made only on the **BID/ACCEPTANCE form provided herein** with all blank spaces for bids properly filled in and all signatures properly executed.

**BRAND NAME OR EQUAL SPECIFICATION:**

The use of a “brand name or equal” specification which uses one or more manufacturer’s name or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products. Brand name or equal specifications are not intended to limit or restrict competition. An item shall be considered to be substantially equivalent, or “equal” to the specified brand if in the opinion of the Procurement Officer, the College can reasonably anticipate sufficiently similar quality, capacity, durability, performance, utility, and productivity as provided by the specified brand. Your offer must include manufacturer’s latest literature showing complete product specifications if bidding on other than specified. Failure to include descriptive literature may be reason for rejection of your bid.

**REJECTION/CANCELLATION:** This solicitation does not commit the College to award a contract, to pay any costs incurred in the preparation of the bid/proposal or to procure any good or services.

Isothermal Community College reserves the right to reject any and all bids and to award the contract on the basis of benefits other than price alone. It further reserves the right to purchase based upon price and/or benefits, which best meet the needs of the College.

## BIDDING SCHEDULE

IN RECEIPT OF:				
ADDENDUM 1 <input type="checkbox"/>	ADDENDUM 2 <input type="checkbox"/>	ADDENDUM 3 <input type="checkbox"/>	ADDENDUM 4 <input type="checkbox"/>	ADDENDUM 5 <input type="checkbox"/>

Primary and Disaster Recovery Backup Servers with Support and Maintenance						
Item #	MGF	MFG Part #	Description	QTY	Unit Cost	Extended Cost
1	ExaGrid	EX36-SEC	Disk Capacity: Raw: 96 TB, Useable: 72 TB. 36 TB Full Backup. Includes 1 10 Gigabit Add on Card Disks are encrypted	1	\$	\$
2	ExaGrid	EX18-SEC	Disk Capacity: Raw: 48 TB, Useable: 36 TB. 18 TB Full Backup. Disks are encrypted.	1	\$	\$
3	ExaGrid	EX-10GBE- RJ45	10 Gigabit Ethernet Dual Port RJ45 10GbaseT Option for all ExaGrid models.	2	\$	\$
4	ExaGrid	EX-5YR-MS-S	Five year 5 x 8 Customer Support and product Maintenance for <b>EX36- SEC and EX18-SEC</b>	1	\$	\$
5			Delivery (F.O.B. Destination)	1	\$	\$
<b>Total Offer Cost</b>				<b>\$</b>		

○ Estimated CALENDER days to deliver after receipt of purchase order: \_\_\_\_\_ Days

### **BIDDER'S STATEMENT OF ASSURANCES AND COMPLIANCES**

The Undersigned, as a responsive bidder, certifies that the General and Special Conditions of this bid have been read and understood.

The Bidder hereby provides assurance that the firm represented in this bid as indicated below:

1. Will comply with all requirements, stipulations, terms, and conditions as stated in the bid document; and
2. Is not guilty of collusion with other vendors possibly interested in this bid, in arriving at or determining prices to be submitted; and
3. That such agent, as indicated below, is officially authorized to represent the firm in whose name the bid is submitted.

Name of Firm:	
Signature of Agent:	
Printed Name:	
Title:	
Date:	

# GENERAL CONDITIONS

## 1. GENERAL

It is understood and agreed that by submitting a bid that the Contractor has examined these contract documents, drawings and specifications and has visited the site of the Work and has satisfied himself relative to the Work to be performed.

## 2. DEFINITIONS

**Owner:** "Owner" shall mean, The State of North Carolina through Isothermal Community College.

**Contractor:** "Contractor" shall mean the entity that will provide the services for the Owner.

**Designer:** The **designer(s)** are those referred to within this contract, or their authorized representatives. The Designer(s), as referred to herein, shall mean architect and/or engineer responsible for preparing the project plans and specifications. They will be referred to hereinafter as if each were of the singular number, masculine gender.

**Contract Documents:** "Contract Documents" shall consist of the Notice to Bidders; General Conditions of the Contract; special conditions if applicable; Supplementary General Conditions; any drawings and specifications, including all bulletins, addenda or other modifications of specifications incorporated into the documents prior to their execution; the bid; the contract; the performance bond if applicable; and insurance certificates. All of these items together form the contract.

## INTENT AND EXECUTION OF DOCUMENTS

The drawings and specifications are complementary, one to the other. That which is shown in the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In the case of discrepancy or disagreement in the Contract Documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.

In such cases where the nature of the work requires clarification by the Designer/ Owner, the Designer/ Owner shall furnish such clarification. Clarifications and drawings shall be consistent with the intent of the Contract Documents and shall become a part thereof.

## 4. AS-BUILT MARKED-UP DOCUMENTS (IF APPLICABLE)

Contractor shall provide one complete set of legible "as-built" marked-up construction drawings and specifications recording any and all changes made to the original design during the course of construction. In the event no changes occurred, submit construction drawings and specifications set with notation "No Changes." The Owner must receive "As-built" marked-up construction drawings and specifications before the final pay request can be processed.

## 5. SUBMITTAL DATA

The Contractor awarded the contract shall submit all specified submittals to the Owner. A minimum number of copies as specified by the owner of all required submittal data pertaining to construction, performance and general dimensional criteria of the components listed in the technical specifications shall be submitted. No material or equipment shall be ordered or installed prior to written approval of the submittals by the Owner. Failure to provide submittal data for review on equipment listed in the technical specifications will result in removal of equipment by the Contractor at his expense if the equipment is not in compliance with the specifications.

## 6. SUBSTITUTIONS

In accordance with the provisions of G.S. 133-3, material, product, or equipment substitutions proposed by the bidders to those specified herein can only be considered during the bidding phase until five (5) days prior to the receipt of bids or by the date specified in the pre bid conference, when submitted to the Owner with sufficient data to confirm material, product, or equipment equality. Proposed substitutions submitted after this time will be considered only as potential change order, **if applicable to the project.**



Submittals for proposed substitutions shall include the following information:

- a. Name, address, and telephone number of manufacturer and supplier as appropriate.
- b. Trade name, model or catalog designation.
- c. Product data, including performance and test data, reference standards, and technical descriptions of material, product, or equipment. Include color samples and samples of available finishes as appropriate.
- d. Detailed comparison with specified products including performance capabilities, warranties, and test results.
- e. Other pertinent data, including data requested by the Owner to confirm product equality.

If a proposed material, product, or equipment substitution is deemed equal by the Owner to those specified, all bidders of record will be notified by Addendum.

## **7. WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE**

The contractor shall maintain, in readable condition at his job site, one complete set of working drawings and specifications for his work. Such drawings and specifications shall be available for use by the owner or its authorized representative, **if applicable to the project.**

The contractor shall maintain at the job site, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the contractor and submitted to the designer upon project completion and no later than 30 days after acceptance of the project: **if applicable to the project.**

## **8. MATERIALS, EQUIPMENT, EMPLOYEES**

- a. The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, fuel, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the contractor shall furnish evidence as to the quality of materials.
- d. Products are generally specified by ASTM or other reference standards and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items, or equipment shall be submitted to the Owner for approval or disapproval; the Owner prior to the opening of bids shall make such approval or disapproval. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to the Owner and Owner approves.
- e. The Owner is the judge of equality for proposed substitution of products, materials or equipment.
- f. If at any time during the construction and completion of the work covered by these contract documents, the language, conduct, or attire of any workman of the various crafts be adjudged a nuisance to the owner, or if any workman be considered detrimental to the work, the contractor shall order such parties removed immediately from grounds.
- g. The Contractor shall cooperate with the Owner in coordinating construction activities.

- h. The Contractor shall maintain qualified personnel and effective supervision at the site at all times during the project and exercise the appropriate quality control program to ensure compliance with the project drawings and specifications. The designer is responsible for determining compliance with the drawings and specifications.

## **9. CODES, PERMITS AND INSPECTIONS**

The Contractor shall obtain any required permits, and if required, give all notices, and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Owner, he shall bear all cost arising there from.

All work under this contract shall conform to the current North Carolina Building Code and other state and national codes as applicable.

## **10. PROTECTION OF WORK, PROPERTY, THE PUBLIC AND SAFETY**

- a. The contractors shall be jointly responsible for the entire site and the building or construction of the same and provide all the necessary protection, as required by the owner or designer, and by laws or ordinances governing such conditions. They shall be responsible for any damage to the owner's property or that of others on the job, by them, their personnel, or their subcontractors, and shall make such damages good. They shall be responsible for and pay for any damage caused to the owner. All contractors shall have access to the project at all times, except as indicated in the Supplemental General Conditions.
- b. The contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building, whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause shall be repaired or replaced without extra cost to the owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the owner.
- d. The contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around it. He shall barricade all walks, roads, etc., as directed by the Owner to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lit at night.
- e. The contractor shall provide all necessary safety measures for the protection of all people on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.
- f. The contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.
- i. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the contractor on account of such an action shall be determined as provided for under Article 13(b).
- j. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging waste products.

## **11. SUBCONTRACTS AND SUBCONTRACTORS**

The Contractor is and remains fully responsible for his own acts or omissions as well as those of any subcontractor or of any employee of either. The Contractor agrees that no contractual relationship exists between the subcontractor and the Owner in regard to the contract, and that the subcontractor acts on this work as an agent or employee of the Contractor.

## **12. CONTRACTOR-SUBCONTRACTOR RELATIONSHIPS**

The Contractor agrees that the terms of these Contract Documents shall apply equally to each Subcontractor as to the Contractor, and the Contractor agrees to take such action as may be necessary to bind each Subcontractor to these terms. The Contractor further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to Contractor-Subcontractor relationships. The Owner reserves the right to limit the number of portions of work to be subcontracted as hereinafter specified.

## **13. CHANGES IN THE WORK AND CLAIMS FOR EXTRA COST**

- a. The owner may have changes made to the work covered by the contract. These changes will not invalidate and will not relieve or release the contractor from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be carried out under conditions of the original contract.
- b. Except in an emergency endangering life or property, no change shall be made by the contractor except upon receipt of approved change order from the Owner, authorizing such change. No claim for adjustments of the contract price shall be valid unless this procedure is followed. Should a claim for extra compensation by the contractor be denied by the designer or the owner, the contractor may pursue his claim in accordance with G.S. 143-135.3.

In the event of an emergency endangering life or property, the contractor may be directed to proceed on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as specified by the designer or owner, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

- c. In determining the values of changes, either additive or deductive, contractors are restricted to the use of the following methods:
  1. Where the extra work involved is covered by unit prices quoted in the proposal, or subsequently agreed to by the Contractor and Owner the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c (2) herein. If neither party elects to proceed under c (2), then unit prices shall apply.
  2. The contracting parties shall negotiate and agree upon the equitable value of the change prior to the issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined shall be as follows: all contractors (the single contracting entity (prime), his subcontractors(1<sup>st</sup> tier subs), or their sub-subcontractors (2<sup>nd</sup> tier subs, 3<sup>rd</sup> tier subs, etc.) shall be allowed a maximum of 10% on work they each self-perform; the prime contractor shall be allowed a maximum of 5% on contracted work of his 1<sup>st</sup> tier sub; 1<sup>st</sup> tier, 2<sup>nd</sup> tier, 3<sup>rd</sup> tier, etc. contractors shall be allowed a maximum of 2.5% on the contracted work of their subs. ; Under Method "c(1)", no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.
- e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
  1. The actual costs of materials and supplies incorporated or consumed as part of the work;
  2. The actual costs of labor expended on the project site; labor expended in coordination, change

order negotiation, record document maintenance, shop drawing revision or other tasks necessary to the administration of the project are considered overhead whether they take place in an office or on the project site.

3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed thirty percent (30%) of the actual costs of labor;
4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the work;
5. The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the work.

Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the owner.

- f. Should concealed conditions be encountered in the performance of the work below grade or should concealed or unknown conditions in an existing structure be of variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such a change shall be achieved by one of the foregoing methods. All change orders shall be supported by a unit cost breakdown showing the method of arriving at net cost as defined above.
- g. Change orders shall be submitted by the contractor in writing to the Owner for review and approval. The contractor will provide such proposals and supporting data in a suitable format. The Owner shall verify correctness. Delay in the processing of the change order due to lack of proper submittal by the contractor of all required supporting data shall not constitute grounds for a time extension or the basis of a claim. Within fourteen (14) days after receipt of the contractor's accepted proposal including all supporting documentation required by the Owner, the Owner shall prepare the change order and forward to the contractor for his signature or otherwise respond, in writing, to the contractor's proposal. Within seven (7) days after receipt of the change order executed by the contractor, the Owner shall, certify the change order by his signature, and forward the change order and all supporting data to the owner for the owner's signature. The owner shall execute the change order, within seven (7) days of receipt.

At the time of signing a change order, the contractor shall be required to certify as follows:

"I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."

- h. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.
- i. If, during the progress of the work, the owner requests a change order and the contractor's terms are unacceptable, the owner, may require the contractor to perform such work on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as specified by the Owner, a correct account of cost together with all proper invoices, payrolls and supporting data. Upon completion of the work a change order will be prepared with allowances for overhead and profit per paragraph d. above and "net cost" and "cost" per paragraph e. above. Without prejudice, nothing in this paragraph shall preclude the owner from performing or having performed that portion of the work requested in the change order.

#### **14. ANNULMENT OF CONTRACT**

If the contractor fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the owner may give notice in writing, sent by certified mail, return receipt requested, to the contractor and his surety (if applicable) of such delay, neglect or default, specifying the same, and if the contractor within a period of seven (7) days after such notice shall not proceed in accordance therewith, then the owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the

contractor, or the surety (if applicable) shall fail to take over the work to be done under this contract within seven (7) days after being so notified and notify the owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said contractor and surety (if applicable). In case the expense so incurred by the owner shall be less than the sum which would have been payable under the contract, if it had been completed by said contractor, then the said contractor and surety (if applicable) shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the contractor and the surety (if applicable) shall be liable and shall pay to the owner the amount of said excess.

## **15. TERMINATION FOR CONVENIENCE**

- a. Owner may at any time and for any reason terminate Contractor's services and work at Owner's convenience, after notification to the contractor in writing via certified mail. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.
- b. Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as approved by Owner; (3) plus ten percent (10%) of the cost of the balance of the work to be completed for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.

## **16. OWNER'S RIGHT TO DO WORK**

If, during the progress of the work or during the period of guarantee, the contractor fails to prosecute the work properly or to perform any provision of the contract, the owner, after seven (7) days' written notice sent by certified mail, return receipt requested, to the contractor from the Owner, may perform or have performed that portion of the work. The cost of the work may be deducted from any amounts due or to become due to the contractor, such action and cost of same having been first approved by the Owner. Should the cost of such action of the owner exceed the amount due or to become due to the contractor, then the contractor or his surety, or both, shall be liable for and shall pay to the owner the amount of said excess.

## **17. REQUESTS FOR PAYMENT**

The Contractor shall refer to the Supplemental General Conditions for specific directions on payment schedule, procedures and the name and address where to send applications for payments for this project. It is imperative that invoices be sent only to the above address in order to ensure proper and timely delivery and handling.

The Owner will process all Contractor pay requests as the project progresses. The Contractor shall receive payment within thirty (30) consecutive days after Owner's approval of each pay request. Payment will only be made for work performed as determined by the Owner.

### **Retainage:**

- a. Retainage withheld will not exceed 5% at any time.
- b. The same terms apply to the general contractor and subcontractors alike.
- c. Following 50% completion of the project no further retainage will be withheld if the contractor/subcontractor has performed their work satisfactorily.
- d. Exceptions:
  1. Owner/Contractor can reinstate retainage if the contractor/subcontractor does not continue to perform satisfactorily.
  2. Following 50% completion of the project, the owner is authorized to withhold additional retainage from a subsequent periodic payment if the amount of retainage withheld falls below 2.5%.

Final payment will be made within forty-five (45) consecutive days after acceptance of the work, receipt of marked-up "as-built" drawings and specifications and the submission both of notarized Contractor's affidavit and final pay request. All pay requests shall be submitted to the Designer/Owner for approval.

**THE CONTRACTOR'S FINAL PAYMENT AFFIDAVIT SHALL STATE: "THIS IS TO CERTIFY THAT ALL COSTS OF MATERIALS, EQUIPMENT, LABOR, SUBCONTRACTED WORK, AND ALL ELSE ENTERING INTO THE ACCOMPLISHMENT OF THIS CONTRACT, INCLUDING PAYROLLS, HAVE BEEN PAID IN FULL."**

## **18. PAYMENTS WITHHELD**

The Owner with the approval of the Owner may withhold payment for the following reasons:

- a. Faulty work which is not corrected.
- b. The unpaid balance on the contract is insufficient to complete the work in the judgment of the Owner.
- c. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
- d. The secretary of the Department of Administration may authorize the withholding of payment for the following reasons:
  - i. Claims filed against the contractor or evidence that a claim will be filed.
  - ii. Evidence that subcontractors have not been paid.

When grounds for withholding payments have been removed, payment will be released. Delay of payment due the contractor without cause will make owner liable for payment of interest to the contractor as provided in G.S. 143-134.1. As provided in G.S. 143-134.1(e), the owner shall not be liable for interest on payments withheld by the owner for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

## **19. MINIMUM INSURANCE REQUIREMENTS**

The work under this contract shall not commence until the contractor has obtained all required insurance and verifying certificates of insurance have been approved in writing by the owner. These certificates shall document that coverages afforded under the policies will not be cancelled, reduced in amount or coverages eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the owner of such alteration or cancellation. If endorsements are needed to comply with the notification or other requirements of this article copies of the endorsements shall be submitted with the certificates.

### **a. Worker's Compensation and Employer's Liability**

The contractor shall provide and maintain, until final acceptance, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

### **b. Public Liability and Property Damage**

The contractor shall provide and maintain, until final acceptance, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury:	\$500,000 per occurrence
Property Damage:	\$100,000 per occurrence / \$300,000 aggregate

In lieu of limits listed above, a \$500,000 combined single limit shall satisfy both conditions.

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the work performed under the contract.

c. **Property Insurance (Builder's Risk/Installation Floater)**

The contractor shall purchase and maintain property insurance until final acceptance, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the owner, the contractor, the subcontractors and sub-subcontractors in the work and shall ensure against the perils of fire, wind, rain, flood, extended coverage, and vandalism and malicious mischief. If the owner is damaged by failure of the contractor to purchase or maintain such insurance, then the contractor shall bear all reasonable costs properly attributable thereto; the contractor shall affect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.

d. **Deductible**

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the contractor.

e. **Other Insurance**

The contractor shall obtain such additional insurance as may be required by the owner or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

f. **Proof of Carriage**

The contractor shall furnish the owner with satisfactory proof of the carriage of the insurance required before written approval is granted by the Owner.

g. **IRS Form W-9**

The contractor shall submit a current IRS Form W-9 to the Owner prior to the start of project.

## **20. ASSIGNMENT**

No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written requests approved by the Owner and solely as a convenience to the Contractor, the Owner may: (1) forward the Contractor's payment check directly to any person or entity designated by the Contractor, and (2) include any person or entity designated by Contractor as a joint payee on the Contractor's payment check. In no event shall such approval and action obligate the Owner to anyone other than the Contractor, and the Contractor shall remain responsible for fulfillment of all contract obligations.

## **21. CLEANING UP AND RESTORATION OF SITE**

The Contractor shall keep the sites and surrounding area reasonably free from rubbish at all times and shall remove debris from the site from time to time or when directed to do so by the Owner. Contractors shall remove demolished concrete from the campus. Before final inspection and acceptance of the project, the Contractor shall thoroughly clean the sites and completely prepare the project and site for use by the Owner.

At the end of construction, the contractor shall oversee and implement the restoration of the construction site to its original state. Restoration includes but is not limited to walks, drives, lawns, trees and shrubs, corridors, stairs and other elements shall be repaired, cleaned or otherwise restored to their original state.

## **22. GUARANTEE**

The contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the final acceptance of the work and shall replace such defective materials or workmanship without cost to the owner.

When items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.

Additionally, the owner may bring an action for latent defects caused by the negligence of the contractor, which is hidden or not readily apparent to the owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

Guarantees for roofing workmanship and materials shall be stipulated in the specification sections governing such roof, equipment, materials, or supplies.

## **23. 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 the label or re-examination listing or identification marking of 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.

All equipment and products must be independent third party tested and labeled (UL, FM, or CTS) before final connections to Owner services or utilities. Pull stations must meet NFPA 72 specifications for height. All work must be in accordance with NFPA 72 and manufacturers' specifications.

Building fire alarm systems shall be tested for proper operation upon completion.

## **24. TAXES**

- a. Federal excise taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3442(3)).
- b. Federal transportation taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3475(b) as amended).
- c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into state work and such costs shall be included in the bid proposal and contract sum.
- d. Local option sales and use taxes, as required by law, do apply to materials entering into state work as applicable and such costs shall be included in the bid proposal and contract sum.
- e. **Accounting Procedures for Refund of County Sales & Use Tax**

Amount of county sales and use tax paid per contractor's statements:

Contractors performing contracts for state agencies shall give the state agency for whose project the property was purchased a signed statement containing the information listed in G.S. 105-164.14(e).

The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement as of April 1, 1991 from the contractor setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to an audit.

In the event the contractors make several purchases from the same vendor, such a certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, the counties, and the county sales and use taxes paid thereon.

Name of taxing county: The position of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale. Therefore, it is important that the county tax be reported for the county of sale rather than the county of use.

When property is purchased from out-of-state vendors and the county tax is charged, the county should be identified where delivery is made when reporting the county tax.



Such a statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of county sales or use tax paid thereon by the contractor.

Similar certified statements by his subcontractors must be obtained by the general contractor and given to the claimant.

Contractors are not to include any tax paid on supplies, tools and equipment which they use to fulfil their contracts and should include only those building materials, supplies, fixtures and equipment which actually become a part of or annexed to the building or structure.

## **25. EQUAL OPPORTUNITY CLAUSE**

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the secretary of Labor, are incorporated herein.

The contractor(s) agree not to discriminate against any employee or applicant for employment because of physical or mental disabilities in regard to any position for which the employee or applicant is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with such disabilities without discrimination based upon their physical or mental disability in all employment practices.

## **26. MINORITY BUSINESS PARTICIPATION**

GS 143-128.2 establishes a ten percent (10%) goal for participation by minority business in total value of work for each State building project.

For construction contracts with a value of less than \$300,000, the Owner has the responsibility to make a good faith effort to solicit minority bids and to attain the goal. The contractor shall include with his bid a completed Identification of HUB Certified/Minority Business Participation form. The Contractor shall submit completed Appendix E MBE Documentation for Contract Payments form with final payment request.

For construction contracts with a value of \$300,000 or greater, the contractor shall comply with the document *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Identification of Minority Business Participation, Affidavits A, B, C, and D, and Appendix E. These forms provided herein are hereby incorporated and made a part of this contract.

## **27. ACCESS TO PERSONS AND RECORDS**

The State Auditor shall have access to people and records as a result of all contracts or grants entered into by the Owner in accordance with General Statute 147-64.7. The Owner's internal auditors shall also have the right to access and copy the Contractor's records relating to the Contract and Project during the term of the Contract and within two years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions and related claims for delay/extended general conditions costs, claims for lost productivity, claims for lost efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from Owner and/or its project representatives.

## **28. GOVERNING LAWS**

This contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina. The Contractor shall comply with all applicable federal, State and local laws, statutes, ordinances and regulations including, but not limited to, the Omnibus Transportation Act of 1991 and its implementing regulations.

## **29. CONTRACTOR EVALUATION**

The contractor's overall work performance on the project shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for determining qualifications to bid on future State projects. In addition to final evaluation, an interim evaluation may be prepared during the progress of project. The owner may request the contractor's comments to evaluate the Owner.