



**Emergency Services Department**

**Request for Proposal #24-7-ES**

**Disaster Transportation Services**

**Date of Issue: March 18, 2024**

**Questions Due Date: March 25, 2024 (Monday) at 12:00 PM (EST)**

**Proposal Due Date: April 8, 2024 (Monday) at 2:00 PM (EST)**

**Direct all inquiries concerning this RFP to:**

Sophia Murnahan

Purchasing Manager

Email: [CumberlandPurchasing@cumberlandcountync.gov](mailto:CumberlandPurchasing@cumberlandcountync.gov)

Phone: 910-678-7743

Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

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## **1.0 PURPOSE AND BACKGROUND**

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County of Cumberland requests proposals from qualified firms to provide Disaster Transportation Services at no immediate or annual cost to the County.

Cumberland County, the fifth-largest County in North Carolina, is located in the Sandhills region. It is bordered by Harnett, Sampson, Robeson, and Bladen counties and encompasses 658 square miles. The County has nine municipalities/towns: Fayetteville, the county seat; Eastover; Falcon; Godwin; Hope Mills; Linden; Spring Lake; Stedman; and Wade.

The County intends to enter into two (2) stand-by-contracts with qualified vendors to provide disaster transportation services on an “as needed basis” pre- and post-disaster as directed by the County’s Emergency Services Department - one with a “primary” contractor and the other with a “secondary” contractor. The “secondary” contractor will serve as a backup to the “primary” for any disaster or emergency that may be of a scale larger than one company would be capable and equipped to handle. The County will reserve the right to decide, at the guidance and recommendation of the County Manager and/or the Emergency Services Director when and if the “secondary” contract will be activated.

The Federal Emergency Management Agency (FEMA) defines three levels of disaster. A disaster is a natural catastrophe, technological accident, or human-caused event that has resulted in severe property damage, deaths, and/or multiple injuries. A "large-scale disaster" is one that exceeds the response capability of the local jurisdiction and requires State, and potentially Federal, involvement. As used in the Stafford Act, a "major disaster" is "any natural catastrophe [...] or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under [the] Act to supplement the efforts and available resources or States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby."

The County may experience multiple disasters in a short period or remain unaffected for years.

## **2.0 PROPOSAL INSTRUCTIONS & REQUIREMENTS**

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### **2.1 REQUEST FOR PROPOSAL DOCUMENT**

The RFP is comprised of the base RFP document, any attachments, and any addenda released before contract award. All attachments and addenda released for this RFP in advance of any contract award are incorporated herein by reference. By submitting a proposal, the vendor agrees to meet all stated requirements in this section as well as any other specifications and requirements stated in this RFP. If a vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the County to receive a better proposal, the vendor is urged and cautioned to submit these items in the form of a question during the question and answer period in accordance with Section 2.3.

Vendors shall populate all attachments of this RFP that require the vendor to provide information and include an authorized signature where requested. Failure to include required documents and/or signatures, where requested, will result in rejection of submitted proposals.

### **2.2 PROPOSAL SUBMITTAL**

Proposals, subject to the conditions made a part hereof and the receipt requirements described below, shall be received at the address indicated in the table below.

Mailing address for delivery of proposal via US Postal Service	Office Address of delivery by any other method (special delivery, overnight, or any other carrier)
<p><i>PROPOSAL TITLE:</i>  <i>RFP #24-7-ES Disaster Transportation Services</i></p> <p><i>Cumberland County Purchasing Office</i>  <i>Attn: Sophia Murnahan</i>  <i>PO Box 1829</i>  <i>Fayetteville, NC 28302</i></p>	<p><i>PROPOSAL TITLE:</i>  <i>RFP #24-7-ES Disaster Transportation Services</i></p> <p><i>Cumberland County Purchasing Office</i>  <i>Attn: Sophia Murnahan</i>  <i>117 Dick Street</i>  <i>4<sup>th</sup> Floor, Room 451</i>  <i>Finance Department</i>  <i>Fayetteville, NC 28301</i></p>

**IMPORTANT NOTE:** All sealed proposals shall be physically delivered to the office address listed above on or before **Monday, April 8, 2024, at 2:00 PM, as per the clock in the Purchasing Office of the Finance Department**, regardless of the method of delivery. All risk of late arrival due to unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service is entirely on the vendor. It is the sole responsibility of the vendor to have the proposal to the County department specified by the specified time and date of opening. Any proposal received after the proposal submission deadline will be rejected.

Public bid opening will be held at **2:00 PM, as per the clock in the Purchasing Office of the Finance Department on Monday, April 8, 2024**, at 117 Dick Street, 4<sup>th</sup> Floor, Room 451, Fayetteville, NC 28301.

- a) Submit **one (1) signed, original executed** proposal response, **five (5)** photocopies, and **one (1)** electronic copy on a flash drive.
- b) Submit your proposal in a sealed package. Clearly mark each package with: (1) Vendor name; (2) the RFP number; and (3) the due date. Address the package(s) for delivery as shown in the table above. Proposals will be subject to rejection unless submitted with the information above included on the outside of the sealed proposal package.
- c) The electronic copy of your proposal must be provided on a flash drive. The files **shall NOT** be password protected, shall be in .PDF or .XLS format, and shall be capable of being copied to other media including readable in Microsoft Word and/or Microsoft Excel.
- d) Firms are to submit written proposals which present the firm’s qualifications and understanding of the Work to be performed. The firm’s proposal should be prepared simply and economically and should provide all the information which it considers pertinent to its proposal and qualifications for the project. Emphasis should be placed on completeness of services offered and clarity of content. **The response should be limited to fifty (50) pages double-sided, or as close as possible.**
- e) All attached forms **MUST** be **completed** and **signed** by an authorized individual. Forms that are not completed entirely and/or not signed may result in disqualification.
- f) Vendors must follow the instructions in Section 3.1 to mark any pages as “confidential” or the like. Otherwise, the proposer will automatically be disqualified.
- g) All proposal addendums and/or corrections will be posted on the Cumberland County Vendor Self Service site <https://ccmunis.co.cumberland.nc.us/vss/Vendors/Vbids/Default.aspx> . Vendors shall submit a notice of intent to propose by email to [CumberlandPurchasing@cumberlandcountync.gov](mailto:CumberlandPurchasing@cumberlandcountync.gov) to receive addendums by email.
- h) Vendors are encouraged to review all addendums to ensure they do not include submission instruction changes. Such changes will be applied during bid compliance review.

## 2.3 PROPOSAL QUESTIONS

Written questions shall be emailed to [CumberlandPurchasing@cumberlandcountync.gov](mailto:CumberlandPurchasing@cumberlandcountync.gov) by **12:00 PM (EST) on Monday, March 25, 2024**. Vendors should enter “**RFP #24-7-ES Disaster Transportation Services: Questions**” as the subject for the email. Questions will not be answered by phone. Questions submittals should include a reference to the applicable RFP section.

Questions received prior to the submission deadline date, the County’s response, and any additional terms deemed necessary by the County will be posted in the form of an addendum to the Cumberland County Vendor Self Service Site, <https://ccmunis.co.cumberland.nc.us/vss/Vendors/default.aspx> and shall become an Addendum to this RFP. **Vendors who submit an intent to bid will receive addendums by email.** Vendors shall rely *only* on written material contained in an Addendum to this RFP. **Vendors should not contact any other County employees, besides those listed above, during the bid process. Vendors who contact any other County employees may be disqualified.**

Any questions considered minute in nature or that point to an error in the RFP or that the County determines will produce information required in order for all vendors to submit a responsible proposal, may be answered at the County’s discretion after the specified date and time. Such questions that are received after the deadline are not guaranteed to be answered and if the questions qualify as “minute in nature” shall be determined at the sole discretion of the County.

## 2.4 RFP TERMS & CONDITIONS

It shall be the vendor’s responsibility to read the instructions, the County’s terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP, and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

## 3.0 NOTICES TO VENDOR

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### 3.1 PROHIBITED COMMUNICATIONS AND CONFIDENTIALITY

**PROHIBITED COMMUNICATION:** Each vendor submitting a proposal, including its representatives, subcontractors, and suppliers, is prohibited from having any communication with any employees or members of the board of commissioners of the County except those employees of the County’s Finance Department as designated in this **RFP**. A vendor who does not comply with this provision may be disqualified from award of a contract.

**!IMPORTANT INFORMATION!** **CONFIDENTIAL INFORMATION:** The proposal must not contain any information marked as “confidential” or as a “trade secret” or in any other manner as to indicate that it is information protected by the Trade Secrets Protection Act ( the “Act”) as set out in Article 24 of Chapter 66 of the North Carolina General Statutes, **unless the vendor has noticed the County Finance Department of its intent to designate any information in the proposal as such and received permission from the County Finance Department to do so in writing.** Vendor’s notice to the County Finance Department must be in writing and must describe the information for which confidentiality is requested and explain how the information is a “trade secret” as defined in G.S. § 66-152(3). If the County Finance Department determines the information for which confidentiality is requested is a “trade secret” Covered by the Act, it will notify the vendor how to mark the information in the proposal and will identify the measures that County will take to protect the confidentiality of the information. Vendor’s submission of a proposal after receipt of this notice from the County Finance Department shall be deemed to be acceptance of the County Finance Department’s statement of how it will maintain confidentiality. If the County Finance Department determines the information for which confidentiality is requested is not a “trade secret” covered by the Act, it will notify vendor of that determination. Any proposal marked with any information as “confidential” or as a “trade secret” or in any other manner as to indicate that it is information protected by the Act in violation of this section shall be regarded as not responsive to the request for proposals and shall not be considered.

### **3.2 PROPOSAL COMPLIANCE**

It is in the best interest of vendors to submit proposals that are clear, concise, and easily understood. Proposals should provide information essential for a straightforward and concise description of vendor capabilities to satisfy the requirements of the RFP specifications.

Vendor may include any optional data not provided for elsewhere and considered to be pertinent to this proposal as an addendum.

Vendors are urged and cautioned to read the RFP completely through as noncompliance with requirements may result in bid rejection. Section 4.0 requirements and request for information must be in the same order with the same titles as listed in Section 4.0. Vendor proposals should be easy to follow and all sections should be easily identified.

The specifications included in this package describe the services that the County feels are necessary to meet the performance requirements of this RFP, and shall be considered the minimum standards expected of the Proposer. However, the specifications are not intended to exclude potential bidders.

If the vendor is unable to meet any of the specifications as outlined therein, vendors are advised to submit questions and concerns regarding the specifications during the question and answer period described in Section 2.3.

If the vendor does not submit questions or concerns regarding the specifications, the County shall assume it is able to fully comply with these specifications. The County shall be the sole and final judge of compliance with all specifications.

The County further reserves the right to determine the acceptability or unacceptability of any and all alternatives or deviations.

### **3.3 PROPOSAL EVALUATION PROCESS**

The County shall review all responses to this RFP to confirm that they meet the specifications and requirements of the RFP. The County shall not be required to hold interviews; however, depending on the number of responses and the information contained in the responses, the County may decide to conduct interviews with firms of its choice. The County reserves the right to request clarification of information submitted.

The County reserves the right to reject any and all proposals.

### **3.4 EVALUATION CRITERIA**

Proposals will be evaluated, and award made based on considering the following criteria to result in an award most advantageous to the County:

A maximum of 100 points may be awarded per vendor during the proposal evaluation process.

1. Qualifications and Relative Experience of Firm	30 points
2. Availability and Response Time	20 points
3. Understanding of Work Statement	10 points
4. Safety Protocols and Training	20 points
5. Cost Proposal	<u>20 points</u>
	100 points

### **3.5 METHOD OF AWARD**

RFP will be awarded based on best overall value method of award.

While the intent of this RFP is to award a Contract(s) to multiple Vendors, the County reserves the right to make separate awards to different Vendors for one or more line-items, to not award one or more line-items or to cancel this RFP in its entirety without awarding a Contract if it is considered to be most advantageous to the County to do so. The County reserves the right to waive any minor informality or technicality in proposals received.

## **4.0 SCOPE OF WORK & VENDOR'S PROPOSAL CONTENT REQUIREMENTS**

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### **4.1 SCOPE OF WORK**

In the event of a notice or no-notice disaster overwhelming local government evacuation capabilities, the County will engage private transportation vendors to assist in evacuating the general population, including non-ambulatory citizens and those requiring American with Disabilities Act (ADA) support. This Scope of Work outlines the requirements for vendors providing transportation services during emergency evacuation operations.

### **OBJECTIVES**

#### **A. OBJECTIVES**

- The primary goal is to safely evacuate individuals from disaster-affected areas to designated shelters or safe locations.
- Ensure that transportation services are accessible to all members of the population, including those with disabilities, the elderly, and individuals with limited mobility. This involves providing vehicles and support services that comply with ADA standards and cater to the diverse needs of the community.
- Provide timely and efficient transportation services to evacuate people before the disaster worsens or to provide assistance immediately after the event.

#### **B. TASKS**

- The vendor shall provide one or more vehicles capable of transporting a minimum of one (1) person up to fifty-six (56) persons from a single designated staging location within twelve (12) hours or less of notification from Emergency Services Director or designee.
- Vendors may be requested to report to up to four (4) locations simultaneously, with the ability to transport up to 224 people at once.
- Vehicles must comply with ADA standards issued by the Department of Transportation, accommodate adult and child passengers, and be equipped with heat and air temperature regulation systems for passenger comfort.
- Vendors are required to make accommodations for persons. ADA limits the definition of Service Animals to dogs and miniature horses, this RFP only covers dogs. As defined by the Americans with Disabilities Act, a "service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability."
- Vendors are required to have the ability to transport persons in wheelchairs. Vehicles capable of transporting wheelchair passengers must have appropriate safety hardware and operating equipment in compliance with Federal Motor Carrier Safety Administration (FMCSA) regulations.
- Contracted vehicles must possess valid North Carolina Department of Transportation (NCDOT) registration and inspection documentation and present it to county staff upon request.
- Vendors are responsible for ensuring all deployed vehicles are roadworthy, safe, clean, and compliant with US and NC DOT regulations.
- Maintenance, repair, and replacement of vehicles are the responsibility of the vendor.
- All drivers must be English-speaking, courteous, properly licensed, insured, and trained on the equipment they operate.



- Drivers must provide a copy of their vehicle's insurance certificate to inspectors upon request.
- Vendors must maintain appropriate liability insurance coverage and provide insurance documentation as part of their contract proposal.
- Vendors are responsible for fuel, food, and lodging for drivers and support personnel during evacuation operations.
- If emergency accommodations and refueling services are unavailable, the County may provide these services, with reimbursement required from the Vendor.
- Vehicles must be equipped with cell phone or satellite communication capabilities for contact with the transportation coordinator at the Emergency Operations Center.
- Vendors must maintain documentation to support billing and audit processes.
- Invoices must include a daily report for each vehicle, detailing trip destinations, passenger information, overnight stopping locations, and start/stop mileage.
- Passenger information must be kept confidential.

## 4.2 VENDOR'S PROPOSAL REQUIREMENTS

The vendor's proposal must include the required information below. Proposals shall be tabbed, using the titles identified in this section, to identify the required information. Tabs must be in the same order as listed below. Failure to submit this information may render its proposal non-responsive. **Vendors are urged and cautioned to read the notices in Section 3.1. Noncompliance with the confidentiality requirements will result in a proposal being considered non-responsive.**

### A. QUALIFICATIONS AND RELATIVE EXPERIENCE OF FIRM

The vendor is required to provide a detailed description of their qualifications, encompassing any accolades or certifications they have attained. Furthermore, the vendor must outline their company's and staff experience in furnishing transportation or disaster transportation services to local governments. Additionally, the vendor must disclose any settled or pending litigation against the company or any alias of the company.

### B. AVAILABILITY AND RESPONSE TIME

The vendor must outline their capability and availability of various vehicle types to fulfill the tasks outlined in section 4.1. They should also explain how they can adjust their operations to match the size and type of disaster. Additionally, the vendor must specify their response time from their home base to the County's Emergency Services Center at 500 Executive Place, Fayetteville, NC, 28305 upon notification by the County that services are needed to provide transportation for 56 persons some of which may have service dogs and/or need wheelchair transportation.

### C. UNDERSTANDING OF WORK STATEMENT

The content of the Understanding of Work Statement in accordance with Section 2.2, Item D will be evaluated.

### D. SAFETY PROTOCOLS AND TRAINING

Vendor must provide details regarding the mandatory training required for staff to ensure compliance with company regulations. Training could include but not limited to driver training, company and customer service protocols, Health Insurance Portability and Accountability Act (HIPAA) compliance, and Bloodborne Pathogens (BBP) training.

### E. COST PROPOSAL

Cost must be submitted using **Attachment C: Proposal Cost**. Proposal price shall constitute the total cost to the State for complete performance in accordance with the requirements and specifications herein, including all applicable charges for handling, transportation, administrative and other similar fees. If discount is available for prompt payment, identify terms so it may be considered in analyzing proposal.

### F. REFERENCES

Vendors shall provide at least three (3) references for which your company has provided services of similar size and scope to that proposed herein.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER	EMAIL ADDRESS

## **5.0 CONTRACT TERMS AND CONDITIONS**

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### **5.1 IRAN DIVESTMENT ACT**

As provided in N.C.G.S. 147-86.55-69, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the North Carolina State Treasurer pursuant to G.S. 147-86.57(6) c, is ineligible to contract with the County of North Carolina or any political subdivision of the COUNTY.

### **5.2 E-VERIFY**

CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Contractor utilizes a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

### **5.3 DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL**

The CONTRACTOR certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. It is the responsibility of each CONTRACTOR to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.

### **5.4 CONTRACT CHANGES**

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by the COUNTY and CONTRACTOR.

### **5.5 CONTRACT TERM**

The Contract shall have an initial term of three (3) years, beginning on the date of contract award (the "Effective Date"). The CONTRACTOR shall begin work under the contract immediately after the notice to proceed is received.

At the end of the Contract's current term, the COUNTY shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of two (2) additional one (1) year terms.

### **5.6 RECORDS**

The CONTRACTOR awarded this contract shall maintain adequate records to document and justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion of the contract resulting from this RFP. The COUNTY shall have access to all records, documents and information collected and/or maintained by others in the course of the administration of this contract. This information shall be made accessible at the CONTRACTOR's place of business to the COUNTY, including the Comptroller's Office and/or its designees, for purposes of inspection, reproduction and audit without limitation or restriction.

## 5.7 RESPONSE TIMELINE

The vendors must comply with timelines as described in Section 4.1 (B).

## 5.8 WRITTEN NOTICE TO PROCEED

The COUNTY shall issue an official written notice to proceed for work pursuant to this contract. The notice shall be sent via facsimile or email and followed by regular mail. Under no circumstances shall the COUNTY be liable for any work performed unless the written notice to proceed has been sent and received by the CONTRACTOR. CONTRACTOR must acknowledge receipt of the written notice to proceed prior to proceeding. **Additionally, no work shall commence until a contract amendment is processed to incorporate a “not to exceed” amount into the contract language.**

## 5.9 APPROPRIATION OF FUNDS

The parties intend that contractual performances by either party beyond the first fiscal year after the execution of this agreement be contingent upon the continued funding and appropriation by the COUNTY Board of Commissioners. Therefore, the parties agree that services provided and payment due under this agreement will be provided upon a year-to-year basis contingent upon continued funding and appropriation. The fiscal year for Cumberland County begins on July 1 and ends June 30th.

## 5.10 PRICING

Proposal price shall constitute the total cost for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other similar fees. CONTRACTOR shall not invoice for any amounts not specifically allowed for in this RFP. Cost shall be all inclusive.

## 5.11 PAYMENT TERMS

The CONTRACTOR will be paid net thirty (30) calendar days after the CONTRACTOR’S invoice is approved by the COUNTY.

## 5.12 FINANCIAL STABILITY

CONTRACTOR warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that CONTRACTOR has no constructive or actual knowledge of an actual or potential legal proceeding being brought against CONTRACTOR that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

## 5.13 APPLICABLE FEMA CLAUSES

Whether specified explicitly or not, this contract shall incorporate inhere all applicable clauses established in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses, attached and incorporated herein as **Attachment G. To ensure compliance with all federal contract requirements, additional contract terms and conditions may be added to the final executed contract by the County.** If any applicable federal terms are modified during the contract period, such requirements shall be incorporated herein.

## 5.14 LICENSE, PERMITS AND CERTIFICATIONS

All licenses, permits, and certificates required for and in connection with any and all parts of the work to be performed under the provisions of the Contract Documents shall be secured by the CONTRACTOR entirely at its own expense.

## **5.15 COMPLIANCE WITH LAWS**

CONTRACTOR shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

## **5.16 SAFETY**

CONTRACTOR shall be solely responsible for maintaining safe working conditions and practices at all work sites. CONTRACTOR shall take all reasonable steps to ensure safety for both workers and visitors to the site(s) to include traffic control. CONTRACTOR will also be solely responsible to ensure that all OSHA requirements are met and a safety officer assigned to the project for the duration of this contract.

## **5.17 WORK SCHEDULE**

Contractors work schedule will vary dependent upon the severity of the disaster and/or incident. Upon activation of contract, vendor will provide vehicles and drivers within 24 hours' notice. It will be Vendor's responsibility to ensure drivers are held to driving stipulations concerning number of hours worked. Vendor shall be responsible for ensuring drivers are available for a minimum of 24 hours.

## **5.18 INSURANCE:**

Providing and maintaining adequate insurance coverage is a material obligation of the CONTRACTOR and is of the essence of this Contract. All such insurance shall meet all laws of the County of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The CONTRACTOR shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the CONTRACTOR shall not be interpreted as limiting the CONTRACTOR'S liability and obligations under the Contract. During the term of the Contract, the CONTRACTOR at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract.

## **5.19 GENERAL INDEMNITY**

The CONTRACTOR shall hold and save the COUNTY, 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 tortious acts of the CONTRACTOR provided that the CONTRACTOR is notified in writing within 30 days that the COUNTY has knowledge of such claims. The CONTRACTOR represents and warrants that it shall make no claim of any kind or nature against the COUNTY's agents who are involved in the delivery or processing of CONTRACTOR goods or services to the COUNTY. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

## **5.20 NON-WAIVER OF RIGHTS**

The COUNTY'S failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this contract.

## **5.21 ENTIRE CONTRACT**

This contract formally entered into by the parties after the vendor is selected constitutes the entire understanding of the parties. In the event of a conflict between the COUNTY's contract terms and the CONTRACTOR'S contract terms, the COUNTY's terms shall be the overriding determining factor.

## **5.22 OTHER LAWS AND REGULATIONS**

CONTRACTOR will comply with any and all applicable federal, state, and local standards, regulation, laws, statutes and ordinances regarding toxic, hazardous, and solid wastes and any other 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, Occupational Safety and Health Administration (OSHA), the North Carolina Department of Environment and Natural Resources, Health Departments, and any other federal, state or local agency having jurisdiction, to insure 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 will indemnify and hold harmless the COUNTY for CONTRACTOR's failure or neglect to comply with its obligations under this section.

## **5.23 ASSIGNMENT AND SUBCONTRACTING**

The CONTRACTOR shall not assign or subcontract the work, or any part thereof, without the previous consent of Cumberland County, nor shall it assign, by power of attorney, operation of law, or otherwise, any moneys payable under the Contract without prior written consent of the COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.

If the CONTRACTOR proposes to subcontract work in this Project, the subcontractor and the activity in this project are to be identified in the proposal. CONTRACTOR shall perform at least 50% of work. All subcontractors must be approved by the COUNTY and must conform to and comply with the same terms, standards, and specifications applicable to the contracting firm.

The CONTRACTOR shall be fully responsible and accountable to the COUNTY for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by him.

## **5.24 CONTRACT CANCELLATION**

Termination of this contract shall be in accordance with the *Termination Clause* contained in *Attachment G*.

The COUNTY may terminate this contract at any time by providing 30 days' notice in writing from the COUNTY to the CONTRACTOR. If the contract is terminated by the COUNTY as provided in this section, the COUNTY shall pay for services satisfactorily completed by the CONTRACTOR, less any payment or compensation previously made.

## **5.25 INDEPENDENT CONTRACTOR**

The relationship of the CONTRACTOR to the COUNTY shall be that of an independent CONTRACTOR.

## **5.26 LAWS AND ORDINANCES**

The contract will be governed by North Carolina law.

## **5.27 PUBLIC OR PRIVATE PROPERTY DAMAGE**

CONTRACTOR shall be responsible for all damage, injury, or loss to any property.

CONTRACTOR shall restore all disturbed areas to their original condition, including re-grading, use of rye grass and permanent grass, and any other means determined to be necessary.

CONTRACTOR failure to restore damage to public or private property to the satisfaction of the COUNTY will result in the COUNTY withholding retainage money in an amount sufficient to make necessary repairs.

## **5.28 DISPUTE RESOLUTION**

CONTRACTOR and COUNTY shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner. If an informal resolution cannot be achieved to attempt to mediate the conflict between the CONTRACTOR and the COUNTY, all litigation shall be commenced in the appropriate division of the General Court of Justice in Cumberland County, North Carolina.

## **5.29 OTHER MUNICIPALITIES**

The County may provide assistance through this contract to municipalities located within the County of Cumberland. Those municipalities consist of Town of Eastover, Town of Falcon, Town of Godwin, Town of Linden, Town of Stedman and Town of Wade.

## **5.30 CONTRACTOR REPRESENTATIONS**

CONTRACTOR warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. CONTRACTOR agrees that it will not enter any agreement with a third party that may abridge any rights of the County under this Contract.

If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, CONTRACTOR will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the CONTRACTOR to provide and deliver the Services and Deliverables.

### **CONTRACTOR certifies that it has not previously or currently:**

- a. Had any criminal felony conviction, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, of CONTRACTOR, its officers or directors, or any of its employees or other personnel to provide services on this project, of which CONTRACTOR has knowledge.
- b. Had any regulatory sanctions levied against CONTRACTOR or any of its officers, directors or its professional employees expected to provide services on this project by any governmental regulatory agencies within the past three years. As used herein, the term "regulatory sanctions" includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings.
- c. Had any civil judgments against CONTRACTOR during the three (3) years preceding submission of its proposal herein.

Any personnel or agent of the CONTRACTOR performing services under any contract arising from this RFP may be required to undergo a background check at the expense of the CONTRACTOR, if so, requested by the COUNTY.

*Proposal Number: RFP #24-7-ES Disaster Transportation Services*

The COUNTY may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the COUNTY may request acceptable substitute personnel or terminate the contract services provided by such personnel.

**Attachments to this RFP begin on the next page.**

## ATTACHMENT A: INSTRUCTIONS TO VENDORS

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1. **READ, REVIEW AND COMPLY:** It shall be the vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to vendors or elsewhere in this RFP document.
2. **DISQUALIFICATION:** Cumberland County reserves the right to disqualify any firm upon reasonable evidence of collusion with intent to defraud or to commit any other illegal practices on the part of the firm. Failure to comply with applicable state laws concerning insurance or bonding may also be grounds for disqualification.
3. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the vendor's sole responsibility to ensure delivery at the designated office by the designated time.
4. **ACCEPTANCE AND REJECTION:** The County reserves the right to reject any and all proposals, to waive minor informality in proposals and to reject proposal with non-minor informalities, based on the sole discretion of the County.
5. **EXECUTION:** Failure to sign EXECUTION PAGE in the indicated space will render proposal non-responsive, and it shall be rejected.
6. **GIFTS:** Gifts and favors to the County of any kind in any amount are prohibited.
7. **INCURRING COST:** Cumberland County shall not be liable for any cost incurred prior to the execution of the contract.
8. **SUSTAINABILITY:** To support the sustainability efforts of the County of Cumberland we solicit your cooperation in this effort. All copies of the proposal are printed double-sided.
9. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150 (1999), 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.
10. **INFORMAL COMMENTS:** The County shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the County during the competitive process or after award. The County is bound only by information provided in this RFP and in formal Addenda issued through the State's IPS and the County's Vendor Self Service website.
11. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by vendor in preparing or submitting offers are the Vendor's sole responsibility; the County of Cumberland will not reimburse any vendor for any costs incurred.
12. **VENDOR'S REPRESENTATIVE:** Each vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
13. **SUBCONTRACTING:** The Contractor shall not assign or subcontract the work, or any part thereof, without the previous consent of Cumberland County, nor shall it assign, by power of attorney, operation of law, or otherwise, any moneys payable under the Contract without prior written consent of the County.

If the vendor proposes to subcontract work in this project, the subcontractor and the activity in this project are to be identified in the proposal.



All subcontractors must be approved by the County and must conform to and comply with the same terms, standards and specifications applicable to the contracting firm.

The vendor shall be fully responsible and accountable to the County for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by him.

14. **INSPECTION AT VENDOR'S SITE:** The County reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective vendor prior to Contract award, and during the Contract term as necessary for the County 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.
15. **EQUAL OPPORTUNITY:** Vendors shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).
16. **AFFIRMATIVE ACTION:** The vendor will take affirmative action in complying with all Federal and County requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
17. **VENDOR REGISTRATION:** Vendors are not required to register as a vendor in our system in order to submit a bid; however, registration is recommended so that vendor information is available for future opportunities. New vendors can register by visiting the following URL: <https://ccmunis.co.cumberland.nc.us/vss/Vendors/default.aspx>.

*This Space is Intentionally Left Blank*

## ATTACHMENT B: EXECUTION OF PROPOSAL

### EXECUTION

In compliance with this Request for Proposal (RFP), and subject to all the conditions herein, the undersigned vendor offers and agrees to furnish and deliver any or all items/services upon which prices are proposed. By executing this proposal, the undersigned vendor certifies that this proposal is submitted competitively and without collusion, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible from covered transactions by any Federal or State department or agency. Furthermore, the undersigned vendor certifies that it and its principals are not presently listed on the Department of State Treasurer's Final Divestment List as per N.C.G.S 147-86.55-69.

The potential Contractor certifies and/or understands the following by placing an "X" in all blank spaces. **Spaces left blank will mean the proposal is incomplete and therefore may be considered non-responsive.:**

- \_\_\_\_\_ The County has the right to reject any and all proposals or reject specific proposals with deviated/omitted information, based on the County's discretion if the omitted information is considered a minor deviation or omission. The County will not contact vendors to request required information/documentation that is missing from a proposal packet. Additionally, if the County determines it is in its best interest to do so, the County reserves the right to award to one or more vendors and/or to award only a part of the services specified in the RFP.
- \_\_\_\_\_ This proposal was signed by an authorized representative of the Contractor.
- \_\_\_\_\_ The potential Contractor has determined the cost and availability of all materials and supplies associated with performing the services outlined herein.
- \_\_\_\_\_ All labor costs associated with this project have been determined, including all direct and indirect costs.
- \_\_\_\_\_ The potential Contractor agrees to the conditions as set forth in this RFP with no exceptions.
- \_\_\_\_\_ The potential Contractor certifies that it has never failed to complete work awarded, outside of circumstances beyond the Contractor's ability to control.
- \_\_\_\_\_ Selection of a contract represents a preliminary determination as to the qualifications of the vendor. Vendor understands and agrees that no legally binding acceptance offer occurs until the Cumberland County Board of Commissioners, or its designee, executes a formal contract and/or purchase order.

Therefore, in compliance with the foregoing RFP, and subject to all terms and conditions thereof, the undersigned offers and agrees to furnish the services for the prices quoted within the timeframe required. Vendor agrees to hold firm offer through contract execution.

**Failure to complete, execute/sign (E-signature or handwritten) proposal prior to submittal shall render the proposal invalid and it WILL BE REJECTED.**

VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & COUNTY & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #10):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		FAX NUMBER:
VENDOR'S AUTHORIZED SIGNATURE:	DATE:	EMAIL:

## ATTACHMENT C: PROPOSAL COST

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Please submit the following daily rates. Daily rates shall include all labor, materials, transportation, general and administrative overhead and profit. Proposal shall be based on single vehicle transportation request of fifty-six (56) persons from a designated pick-up location to a designated drop-off location.

Vendor agrees that the cost proposal will remain firm during the review, approval and contract process.

Description	Initial Three Years	Additional One Year	Second Additional One Year
	Daily Rates	Daily Rates	Daily Rates
Vehicle and Driver (Driving Required)	\$ _____	\$ _____	\$ _____
Vehicle and Driver (Staging Only – No Driving)	\$ _____	\$ _____	\$ _____
ADA Vehicle and Driver (Driving Required)	\$ _____	\$ _____	\$ _____
ADA Bus and Driver (Staging Only – No Driving)	\$ _____	\$ _____	\$ _____

*\*See transportation minimum and maximum in Section 4.1 (B).*

## ATTACHMENT D: CERTIFICATION OF FINANCIAL CONDITION

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Name of Vendor: \_\_\_\_\_

The undersigned hereby certifies that: [check all applicable boxes]

- ☐ The vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: \_\_\_\_\_

- ☐ The vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.
- ☐ The vendor is current in all amounts due for payments of federal and County taxes and required employment-related contributions and withholdings.
- ☐ The vendor is not the subject of any current litigation or findings of noncompliance under federal or County law.
- ☐ The vendor has no findings in any past litigation, or findings of noncompliance under federal or County law that may impact in any way its ability to fulfill the requirements of this Contract.
- ☐ He or she is authorized to make the foregoing statements on behalf of the vendor.

**Note:** This is a continuing certification and vendor shall notify the Contract Lead within 15 days of any material change to any of the representations made herein.

**If any one or more of the foregoing boxes is NOT checked, vendor shall explain the reason in the space below:**

---

Signature

Date

---

Printed Name

Title

**[This Certification must be signed by an individual authorized to speak for the vendor]**

## **ATTACHMENT E: CERTIFICATION REGARDING LOBBYING**

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### Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of 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 subawards at all tiers (including subcontracts, subgrants, 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 was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

## ATTACHMENT F: NON-COLLUSION AFFIDAVIT

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### NON-COLLUSION AFFIDAVIT

State of North Carolina County of Cumberland  
RFP No. 24-7-ES

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is the \_\_\_\_\_ of \_\_\_\_\_, the proposer that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive or sham proposal;
4. Neither the said proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer firm or Person to submit a collusive or sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposing in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other proposer, firm or person to fix the price or prices in the attached proposal or of any other proposers, or to fix any overhead, profit or cost element of the proposal price of the proposal of any other proposer or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Cumberland or any person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and Sworn to Before Me,

This \_\_\_\_\_ day of \_\_\_\_\_, 2023

Notary Public \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## **ATTACHMENT G: FEMA REQUIRED CONTRACT CLAUSES**

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### **Federal Contracting Requirements**

This **Attachment G** is incorporated into the Service Contract between the County and the Contractor. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. All references to the “Contractor” or “Company” or “Vendor” or “Provider” shall be deemed to mean the Contractor.

This Contract may be funded 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 the Contract, unless the federal government determines otherwise. The Contractor is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.CFR Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its sub-contractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

#### **1. Drug Free Workplace Requirements**

Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors entering into federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988.

#### **2. Contractor Compliance**

The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards.

#### **3. Conflict of Interest**

The Contractor must disclose in writing any potential conflict of interest to the County of Cumberland or pass through entity in accordance with federal policy.

#### **4. Mandatory Disclosures**

The Contractor must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

#### **5. Energy Conservation**

The Contractor and Subcontractors 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.

#### **6. Clean Air Act and The Federal Water Pollution Control Act**

##### **Clean Air Act:**

(1) 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.

(2) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Federal Water Pollution Control Act:**

(1) 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.

(2) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**7. Access to Records and Reports**

The following access to records requirements applies to this contract:

(1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) 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.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**8. No Obligation by Federal Government**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**9. Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**10. Changes**

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Contractor's failure to do so shall constitute a material breach of the contract.

**11. Termination**

(1) ***Termination Without Cause.*** The County may immediately terminate this Agreement at any time without cause by giving 30 days' written notice to the Contractor.



**(2) Termination for Default by Either Party.** By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

Any dishonest reporting or inaccurate representation of material will be grounds for immediate termination. Inadequate staffing and trucking may also be grounds for termination.

**(3) Additional Grounds for Default Termination by the County.** By giving written notice to the Contractor, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

The Contractor makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Contractor's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

The Contractor takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

**(4) Cancellation of Orders and Subcontracts.** In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Contractor shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Contractor shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

**(5) No Effect on Taxes, Fees, Charges, or Reports.** Any termination of the Agreement shall not relieve the Contractor of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Contractor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Contractor from any claim for damages previously accrued or then accruing against the Contractor.

**(6) Obligations Upon Expiration or Termination.** Upon expiration or termination of this Agreement, the Contractor shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new vendor access to the systems, software, infrastructure, or processes of the

Contractor that are necessary to migrate the Services to a new vendor; and (d) refund to the County all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

**(7) No Suspension.** In the event that the County disputes in good faith an allegation of default by the Contractor, notwithstanding anything to the contrary in this Agreement, the Contractor agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Contractor, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

**(8) Authority to Terminate.** The County Manager or their designee is authorized to terminate this Agreement on behalf of the County.

**(9) Audit.** During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Contractor necessary to evaluate Contractor's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Contractor. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the County for the cost of the audit.

## **12. Remedies**

**(1) Liquidated Damages:** The County and the Contractor acknowledge and agree that the County may incur costs if the Contractor fails to meet the delivery times set forth in the Request for Proposal for the Products and Services. The parties further acknowledge and agree that: (a) the County may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the County might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay liquidated damages at the rates set forth in the Request for Proposal (if applicable). The parties agree that the liquidated damages set forth in the Request for Proposal shall be the County's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Contractor to meet such delivery times, but shall not be the remedy for the cost to cover or other direct damages.

**(2) Right to Cover:** If the Contractor fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the County of such failure, the County may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

Employ such means as it may reasonably deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Contractor is again able to resume performance under this Agreement; and

Deduct any and all reasonable expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Contractor and, should the County's reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Contractor.

**(3) Right to Withhold Payment.** If the Contractor materially breaches any provision of this Agreement, the County shall have a right to withhold all payments due to the Contractor with respect to the services that are the subject of such breach until such breach has been fully cured.

**(4) Specific Performance and Injunctive Relief.** The Contractor agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Contractor's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the

Contractor hereby agrees that the County may seek an order granting specific performance of such obligations of the Contractor in a court of competent jurisdiction in Cumberland County, North Carolina. The Contractor further consents to the County seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Contractor breaches the Agreement in any material respect.

**(5) Setoff.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

**(6) Other Remedies.** Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

### **13. Debarment and Suspension**

**(1)** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 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 the County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to County, 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 C.F.R. pt. 180, subpart C and 2 C.F.R. 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.

### **14. Equal Employment Opportunity**

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 he 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 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 his 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.

(7) 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.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

#### **15. Davis-Bacon Requirements**

(1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

(2) 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.

(3) Additionally, contractors are required to pay wages not less than once a week.

#### **16. Copeland “Anti-Kickback” Act**

(1) **Contractor.** The contractor shall comply with 18 U.S.C. § 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.

(2) **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.

(3) **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 C.F.R. § 5.12.”

#### **17. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(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 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 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 (b) (1) 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 United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 paragraph (b) (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b) (1) of this section.

**(3) Withholding for unpaid wages and liquidated damages.** The Owner 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 paragraph (b)(2) of this section.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) 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 paragraphs (b)(1) through (4) of this section.

#### **Further Compliance with the Contract Work Hours and Safety Standards Act**

- (1)** The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2)** Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### **18. Rights to Inventions Made Under a Contract or Agreement**

##### ***Patent and Rights in Data***

Contracts involving experimental, developmental, or research work.

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

**Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

- (1)** Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. In accordance with 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of

the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- (2) Any subject data developed under that contract, whether or not a copyright has been obtained; and
- (3) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part.
- (4) When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance.
- (5) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- (6) Nothing contained in this clause regarding rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (7) Data developed by the Purchaser or Contractor and financed entirely without the use of Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
- (8) Unless determined otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.
- (9) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- (10) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

#### **19. Procurement of Recovered Materials**

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- Competitively within a timeframe providing for compliance with the contract performance schedule.
- Meeting contract performance requirements.
- At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### **20. Safeguarding Personal Identifiable Information:**

Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable federal, state, and/or local laws regarding privacy and obligations of confidentiality.

#### **21. 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 pre-approval by the specific federal agency.

#### **22. Byrd Anti-Lobbying Amendment**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. 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 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

#### **23. Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.



**24. Prohibition on Contracting for Covered Telecommunications Equipment or Services**

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause-
- (b) *Prohibitions.*
- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
    - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
    - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) *Exceptions.*
- (1) This clause does not prohibit contractors from providing-
    - (i) A service that connects to the facilities of a third-party, such a backhaul, roaming, or interconnection arrangements; or
    - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
  - (2) By necessary implication and regulation, the prohibitions also do not apply to:
    - (i) Covered telecommunications equipment or services that:
      - i. Are *not used* as a substantial or essential component of any system; and
      - ii. Are *not used* as critical technology of any system.
    - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) *Reporting requirement.*
- (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
  - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
    - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original

equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- (e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

## **25. Domestic Preference for Procurements**

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **26. Affirmative Socioeconomic Steps**

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

## **27. License and Delivery of Works Subject to Copyright and Data Rights**

The Contractor grants to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the County or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures, or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the County data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the County.

## **28. Retention Requirements**

All documents must be retained for a **minimum of three (3) years** from the date of submission of the final federal financial report (SF-425). There are several exceptions to this rule which can be found in 2 CFR § 200.334.