



**STATE OF NORTH CAROLINA**

**DEPARTMENT OF ADMINISTRATION**

**DIVISION OF PURCHASE & CONTRACT**

**Invitation for Bid #: DPC-1117029844**

**NATURAL GAS (INTERRUPTIBLE AND FIRM)**

**Date Issued: November 8, 2024**

**Bid Opening Date: December 6, 2024**

**At 3:00PM ET**

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

Santiago Tella

Consultant

E-mail: [Santiago.tella@doa.nc.gov](mailto:Santiago.tella@doa.nc.gov)



## STATE OF NORTH CAROLINA

### Invitation for Bid #

**DPC - 1117029844**

For internal state agency processing, including tabulation of bids, provide your company's eVP (Electronic Vendor Portal) Number. Pursuant to G.S. 132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential**, before the procurement file is made available for public inspection.

**This page shall be filled out and returned with your bid.  
Failure to do so may subject your bid to rejection.**

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Vendor eVP#

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

**STATE OF NORTH CAROLINA**  
**DEPARTMENT OF ADMINISTRATION – DIVISION OF PURCHASE AND CONTRACT**  
**Statewide Term Contract**

<p><b>Refer <u>ALL</u> Inquiries regarding this IFB to:</b>  <b>All correspondence with vendors shall be through the Ariba Sourcing Tool. Questions will be received in the Ariba Sourcing Tool (only) based on the schedule in Section 2.4</b></p>	<p><b>Invitation for Bid #: DPC – 1117029844</b></p> <p><b>Bids will be virtually opened: December 6, 2024 @ 3:00 pm EST</b></p> <p><b>Microsoft Teams <a href="#">Need help?</a></b>  <b><a href="#">Join the meeting now</a></b>  Meeting ID: 268 509 640 262  Passcode: wXtMHc</p> <p><b>Dial in by phone</b>  <a href="#">+1 984-204-1487,,887934270#</a> United States, Raleigh  <a href="#">Find a local number</a>  Phone conference ID: 887 934 270#</p> <p><b>Join on a video conferencing device</b>  Tenant key: ncgov@m.webex.com  Video ID: 116 624 733 1  <a href="#">More info</a></p>
<p><b>For Statewide Use of All State Entities</b>  <b>STC #: 1511</b></p>	<p><b>Commodity # and Description: 15111 – Gaseous Fuels and Additives</b></p>

**EXECUTION**

In compliance with this Invitation for Bid (IFB), and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein.

By executing this bid, the undersigned Vendor understands that false certification is a Class I felony and certifies that:

- this bid is submitted competitively and without collusion (G.S. 143-54),
- that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and
- it is not an ineligible Vendor as set forth in G.S. 143-59.1.

Furthermore, by executing this bid, the undersigned certifies to the best of Vendor's knowledge and belief, that:

- it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-contractors for any Contract awarded as a result of this IFB, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

As required by Executive Order 24 (2017), the undersigned Vendor certifies will comply with all Federal and State requirements concerning fair employment and that it does not and will not discriminate, harass, or retaliate against any employee in connection with performance of any Contract arising from this solicitation.

G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of this bid response to the IFB, the undersigned certifies, for Vendor's entire organization and its employees or agents, that Vendor are not aware that any such gift has been offered, accepted, or promised by any employees or agents of Vendor's organization.

By executing this bid, Vendor certifies that it has read and agreed to the **INSTRUCTION TO VENDORS** and the **NORTH CAROLINA GENERAL TERMS AND CONDITIONS incorporated below**. These documents can be accessed from the Ariba Sourcing Tool.

Bid Number: IFB #: DPC-1117029844-CI

Vendor: \_\_\_\_\_

**Failure to execute/sign bid prior to submittal may render bid invalid and it MAY BE REJECTED. Late bids cannot be accepted.**

COMPLETE/FORMAL NAME OF VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #21):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		FAX NUMBER:
VENDOR'S AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

**VALIDITY PERIOD**

Offer shall be valid for at least ninety (90) days from date of bid opening, unless otherwise stated here: \_\_\_\_\_ days, or if extended by mutual agreement in writing of the parties. Any withdrawal of this offer shall be made in writing, effective upon receipt by the agency issuing this IFB.

**BID ACCEPTANCE**

If your bid is accepted, all provisions of this IFB, along with the written results of any negotiations, shall constitute the written agreement between the parties ("Contract"). The NORTH CAROLINA GENERAL TERMS AND CONDITIONS are incorporated herein and shall apply. Depending upon the Goods or Services being offered, other terms and conditions may apply, as mutually agreed.

**FOR STATE USE ONLY:** Offer accepted and Contract awarded on date of \_\_\_\_\_ as indicated,

by \_\_\_\_\_.

**(Authorized Representative of Department of Administration, Division of Purchase & Contract)**

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## 1.0 PURPOSE AND BACKGROUND

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The Department of Administration (DOA) serves as the business manager for North Carolina State government and provides leadership to State government for the effective, efficient, economical, and equitable delivery of services to the public. The department also aids and services several advocacy programs that serve diverse segments of the State's population that have traditionally been underserved. The Division of Purchase & Contract (P&C) is the strategic force to provide the State's entities with a catalog of Statewide Term Contracts (STC) that provide for an encompassing organized and efficient manner to pool resources to provide goods and services.

The State through the Department of Administration (DOA) Division of Purchase & Contract (P&C) is seeking to establish a Statewide Term Contract with a qualified Vendor(s) for the provision of the State's requirements for natural gas (interruptible and firm), on an "as needed" basis, if and when ordered by State Departments, Agencies, and Higher Education Institutions during the contract period.

The State currently maintains a State Term Contract with Texican Natural Gas Company, LLC for the provision of the required services. This Contract was established in December 2015 and will expire by December 31, 2024, via the effluxion of time, hence the need for this solicitation and a new State Term Contract. Relevant details of the current Contract, including procedure manuals, forms etc. can be found at <https://www.doa.nc.gov/405n-natural-gas-pipeline-firm-interruptible>.

The purpose of this solicitation is to establish a standalone Statewide Term Contract (STC) for the procurement of natural gas (interruptible and firm) for State Departments, Agencies, Higher Education Institutions and other Authorized Entities. This solicitation is focused solely on securing natural gas (separate from other fuel types), through each of the four (4) natural gas service territories/pipelines/utilities/local distribution companies regulated by the North Carolina Utilities Commission (NCUC), namely: Piedmont Natural Gas, PSNC Energy (Dominion), Frontier Energy and Toccoa.

State agencies reserve the right to revert to a local distribution company (LDC) sales service (as permitted by the LDCs) or other sources (i.e. fuel oil). Agencies may also purchase gas volumes for more than one month (i.e. gas strips) whenever they deem such a purchase to be in their best interest. Vendor is among other things required to advise user agencies on market conditions/trends, to enable agency cost savings via timely purchase of natural gas directly from the LDC when costs are low, and to assist agencies in establishing transport relationships with the LDC.

Agencies, under this Contract, shall be allowed the purchase of six (6) to twelve (12) month strips of natural gas prior to the expiration date of the Contract with delivery completed up to one (1) year after the purchase date.

To comply with Governor Cooper's Executive Order 80 (October 2018), North Carolina's Commitment to Address Climate Change and Transition to a Clean Energy Economy, the Contract resulting from this solicitation intends to provide sustainability features, per industry standards.

The intent of this Invitation for Bid (hereinafter, "IFB") is to receive pricing from Vendors which will offer savings to the State and confirm, through Vendors' submission of bids, their ability to meet the State's needs.

The Contract resulting from this IFB is mandatory for State departments and most State agencies, and by State higher education institutions (except under the conditions specified in G.S. 115D-58.14(a) and G.S. 116-13). The Contract may also be utilized, without further competition, by non-mandatory State Agencies and Other Eligible Entities.

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

The intent of this solicitation is to award a single Statewide Term Contract for each of the Four (4) service territories/utilities.

### 1.1 CONTRACT TERM

The Contract(s) shall have an initial term of three (3) years, beginning on the date of final Contract execution (the "Effective Date").

At any time during the contract period the State may conduct an Open Enrollment process by posting a solicitation in the Ariba Sourcing Tool for the purpose of adding new manufacturer(s) to the contract, to provide a wider coverage of Natural Gas. The awarded Vendors will remain on the Contract for the duration of the contract term unless terminated for convenience.

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

At the end of the Contract's initial term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to Two (2) additional two-year terms. The State will give the Vendor written notice of its intent to exercise each option no later than Sixty (60) days before the end of the Contract's then-current term. In addition, the State reserves the right to extend a contract term after the last active term.

## **1.2 ESTIMATED SPEND**

Based on the historical usage of the STC, the estimated spend for the term of this Contract is \$16,500,000.00. However, this amount is not guaranteed and could be more or less than the historical expenditure during the contract period. No maximum or minimum quantities are guaranteed.

## **2.0 GENERAL INFORMATION**

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### **2.1 INVITATION FOR BID DOCUMENT**

This IFB is comprised of the base IFB document, any attachments, and any addenda released before Contract award, which are incorporated herein by reference.

### **2.2 E-PROCUREMENT FEE**

**ATTENTION: This is an NC eProcurement solicitation facilitated by the Ariba Network. The E-Procurement fee may apply to this solicitation. See paragraph entitled ELECTRONIC PROCUREMENT of the North Carolina General Terms and Conditions.**

General information on the E-Procurement Services can be found at: <http://eprocurement.nc.gov/>.

#### **What is the Ariba Network?**

The Ariba Network is a web-based platform that serves as a connection point for buyers and Vendors. Vendors can log in to the Ariba Network to view purchase orders, respond to electronic requests for quotes, participate in Sourcing Events, and collaborate with buyers on contract documents.

For training on how to use the Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site:

<http://eprocurement.nc.gov/training/vendor-training>.

### **2.3 NOTICE TO VENDORS REGARDING IFB TERMS AND CONDITIONS**

It shall be the Vendor's responsibility to read the Instructions to Vendors, the North Carolina General Terms and Conditions, all relevant exhibits and attachments, and any other components made a part of this IFB 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 IFB.

If Vendors have questions, or issues regarding any component within this IFB, those must be submitted as questions in accordance with the instructions in the BID QUESTIONS Section. If the State determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an IFB addendum. The State may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been addressed during the question-and-answer period.

Other than through the process of negotiations under 01 NCAC 05B.0503, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's bid. This applies to any language appearing in or attached to the document as part of the Vendor's bid that purports to vary any terms and conditions or Vendors' instructions herein or to render the bid non-binding or subject to further negotiation. Vendor's bid shall constitute a firm offer that shall be held open for the period required herein ("Validity Period" above).



The State may exercise its discretion to consider Vendor proposed modifications. By execution and delivery of this IFB Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded unless expressly agreed to during negotiations and incorporated by way of a Best and Final Offer (BAFO). Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's bid as nonresponsive.

**Additional Federal Requirements and Conditions:** State Transit Agencies obtain funding support from the Federal Government and Purchase Orders by such agencies under this Contract will be issued utilizing Federal funds. As such, additional requirements and special conditions pertaining to federally funded purchases entitled 'Federal Requirements and Special Conditions for Materials, Equipment and Supplies' apply to this Contract and are attached to this IFB as 'Attachment K'. Compliance with these requirements and conditions is mandatory and forms an integral part of this solicitation. The Certifications and Affidavit (Attachments B, C, H-J) under the said 'Attachment K - Federal Requirements and Special Conditions for Materials, Equipment and Supplies' MUST be completed and returned with the Bid.

## 2.4 IFB SCHEDULE

The table below shows the *intended* schedule for this IFB. The State will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue IFB	State	November 8, 2024
Hold Pre-Bid Conference/Site Visit	State	November 15, 2024 - 11:00 AM ET
Submit Written Questions	Vendor	November 19, 2024 - 1:00 PM ET
Provide Responses to Questions	State	November 22, 2024
Submit Bids	Vendor	December 6, 2024 - 3:00 PM ET
Intended Contract Award	State	December 18, 2024

## 2.5 SITE VISIT OR PRE-BID CONFERENCE

### Urged and Cautioned Pre-Bid Conference

Date: 11/15/2024

Time: 11:00 AM Eastern Time

Location: Microsoft Teams

**Microsoft Teams** [Need help?](#)

[Join the meeting now](#)

Meeting ID: 267 746 035 669

Passcode: F3FzKS

**Dial in by phone**

[+1 984-204-1487,,419346011#](#) United States, Raleigh

[Find a local number](#)

Phone conference ID: 419 346 011#

**Join on a video conferencing device**

Tenant key: ncgov@m.webex.com

Video ID: 114 208 010 9

[More info](#)

**Instructions:** Vendor representatives are URGED and CAUTIONED to attend the pre-bid conference and apprise themselves of the conditions and requirements which will affect the performance of the work called for by this IFB. A non-mandatory pre-bid conference is scheduled for this IFB. Submission of a bid shall constitute sufficient evidence of Vendor's compliance and no allowance will be made for unreported conditions which a prudent Vendor would recognize as affecting the performance of the work called for in this IFB.

Vendor is cautioned that any information released to attendees during the pre-bid conference, other than that involving the physical aspects of the facility referenced above, and which conflicts with, supersedes, or adds to requirements in this IFB, must be confirmed by written addendum before it can be considered as a part of this IFB and any resulting contract.

## 2.6 BID QUESTIONS

Upon review of the IFB documents, Vendors may have questions to clarify or interpret the IFB in order to submit the best bid possible. To accommodate the Bid Questions process, Vendors shall submit any such questions by the "Submit Written Questions" date and time provided in the IFB SCHEDULE Section above, unless modified by Addendum.

Questions related to the content of the solicitation, or the procurement process should be directed to the person on the title page of this document via the Sourcing Tool's message board by the date and time specified in the IFB SCHEDULE Section of this IFB. Vendors will enter "IFB # **STC-1117029844 – Questions**" as the subject of the message. Question submittals should include a reference to the applicable IFB section. This is the only manner in which questions will be received.

Questions or issues related to using the Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM ET to 5:00 PM EST.

Questions received prior to the submission deadline date, the State's response, and any additional terms deemed necessary by the State will be posted in the Sourcing Tool in the form of an addendum and shall become an Addendum to this IFB. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this IFB, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this IFB.

## 2.7 BID SUBMITTAL

**IMPORTANT NOTE: This is an absolute requirement.** Late bids, regardless of cause, will not be opened or considered, and will be automatically disqualified from further consideration. Vendor shall bear the sole risk of late submission due to unintended or unanticipated delay. It is the Vendor's sole responsibility to ensure its bid has been received as described in this IFB by the specified time and date of opening. Failure to submit a bid in strict accordance with instructions provided shall constitute sufficient cause to reject a Vendor's bid(s). Solicitation responses are subject to Sealed Bidding requirements.

Vendor's bids for this procurement must be submitted through the Sourcing Tool. For training on how to use the Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site: <https://eprocurement.nc.gov/training/vendor-training>.

Questions or issues related to using the Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST.

### Tips for Using the Sourcing Tool

1. Vendors should review available training and confirm that they are able to access the Sourcing Event, enter responses, and upload files well in advance of the date and time response are due to allow sufficient time to seek assistance from the North Carolina eProcurement Help Desk.
2. Vendors may submit their responses early to make sure there are no issues, and then submit a revised response any time prior to the response due date and time. The State will only review the most recent response.

3. Vendors should respond to all relevant sections of the Sourcing Event. Certain questions or items are required in order to submit a response and are denoted with an asterisk. The Sourcing Tool will not allow a response to be submitted unless all required items are completed. The Sourcing Tool will provide error messages to help identify any required information that is missing when response is submitted.
4. Simply saving your response in the Sourcing Tool is not the same as submitting your response to the State. Vendors should make sure they complete the submission process and receive a message that their response was successfully submitted.
5. **Only Bids submitted through the Content Section of the Ariba Sourcing Event will be considered. Bids submitted through the Message Board will not be accepted or considered for award.**

## 2.8 BID CONTENTS

Vendors shall provide responses to all questions and complete all attachments for this IFB that require the Vendor to provide information and upload them to the Sourcing Event in the Sourcing Tool. Vendor may not be able to submit its response in the Sourcing Tool unless all required items are addressed. Vendors shall provide authorized signatures where requested. Failure to provide all required items, or Vendor's submission of incomplete items, may result in the State rejecting Vendor's bid, in the State's sole discretion.

Vendors shall upload the following items and attachments in the Sourcing Tool:

- a) Cover Letter, must include the following: (i) a statement that confirms that the Vendor has read the IFB in its entirety, including all links, and all Addenda released in conjunction with the IFB; (ii) a statement that Vendor agrees to perform in accordance with the scope of work, requirements, and specifications contained herein; and (iii) Vendor's agreement to comply with all instructions, terms and conditions, and attachments.
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Bid Number.
- c) Completed and signed version of EXECUTION PAGES, along with the body of the IFB.
- d) Signed receipt pages of any addenda released in conjunction with this IFB, if required to be returned.
- e) Completed version of ATTACHMENT A: PRICING WORKBOOK S
- f) Completed and signed version of ATTACHMENT B: CERTIFICATION REGARDING LOBBYING.
- g) Completed and signed version of ATTACHMENT C: CERTIFICATE OF COMPLIANCE
- h) Completed and signed version of ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION
- i) Completed and signed version of ATTACHMENT E: CUSTOMER REFERENCE FORM
- j) Completed and signed version of ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR
- k) Completed and signed version of ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION
- l) Completed and signed version of ATTACHMENT H: CERTIFICATE OF NON-COMPLIANCE
- m) Completed and signed version of ATTACHMENT I: CERTIFICATION REGARDING DEPARTMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION
- n) Completed and signed version of ATTACHMENT J: AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES
- o) Completed and signed version of CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS and OMB STANDARD FORM LLL
- p) Completed, signed and notarized Certifications and Affidavit (Attachments B, C, H-J of 'Attachment K - Federal Requirements and Special Conditions for Materials, Equipment and Supplies').

## 2.9 ALTERNATE BIDS

Unless provided otherwise in this IFB, Vendor may submit alternate bids for comparable services, various methods or levels of service(s), or propose different options. Alternate bids must specifically identify the IFB requirements and advantage(s) addressed by the alternate bid. Each bid must be for a specific set of services and must include specific pricing. Each bid must be complete and independent of other bids offered. If a Vendor chooses to respond with various offerings, Vendor shall follow the specific instructions for uploading Alternate Bids in the Sourcing Tool

## 2.10 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

Relevant definitions for this IFB are provided in 01 NCAC 05A .0112 and in the Instructions to Vendors found Sourcing Tool, which are incorporated herein by this reference.

The following definitions, acronyms, and abbreviations are also relevant to this IFB:

- **Alternate Fuel:** Fuel other than Natural Gas.
- **Alternate Transporting Pipeline(s):** The pipeline(s) which transport the gas to the LDC (city gate) when primary pipeline is unavailable.
- **Balancing:** Management of a customer's natural gas supply to enable the Vendor to match the Customer's daily usage with the confirmed pipeline delivery of natural gas supplies by the utility company. Balancing may be required daily, monthly or seasonally with penalties assessed for excessive transportation imbalance.
- **Basis Cost:** All costs associated with the transportation of the natural gas to the LDC city gate including tariff charges, commodity transportation, capacity charges, marketer margin, shrinkage, fuel retention losses, GRI surcharge, Gross Receipts Tax (GRT), custom duties/charges and balancing. The basis cost does not include the commodity cost (NYMEX COST).
- **Basis Differential:** Difference in the market value of natural gas at two separate physical locations at the same point in time. Used as a proxy for the market value of pipeline transportation between those two locations at that time.
- **Book Out:** Removing imbalances by "gas in kind" as per transporter's tariffs.
- **Broker or Marketer:** One that offers natural gas for sale to end-users.
- **Btu:** British thermal unit. The quantity of heat required to raise temperature of one (1) pound of avoirdupois pure water from 57.5 degrees F (57.5°F) to 58.5 degrees F (58.5°F) at a constant pressure of 14.73 psia.
- **Burner Tip:** Consumption at end use customers billing meter.
- **Burner Tip Price:** Estimated all costs of gas to end user.
- **Capacity Assignment:** Process by which an entity that holds the rights and obligations to interstate and/or intrastate pipeline capacity transfers those rights and obligations to another entity.
- **Cash Out:** Paying cash for imbalances according to the provisions of transporter's tariffs.
- **CBA:** Customer Balancing Aggregation.
- **Ccf:** One hundred (100) standard cubic feet of gas.
- **CGA or PGA:** Cost of Gas Adjustment or Purchased Gas Adjustment. The mechanism by which a LDC periodically adjusts its prices in order to compensate for changes in the gas acquisition costs.
- **City Gate:** Location at which natural gas ownership passes from one party to another (interstate or intrastate pipeline to LDC).
- **City Gate Price:** Includes the cost of natural gas plus the Basis Cost for delivery to the local distribution company.
- **Cogeneration:** Sequential production of electricity and useful thermal energy from the same energy source.

- **Contract Price:**
- **Cubic Feet:** Most common unit of measure of gas volume. One (1) cubic foot roughly equals one thousand (1,000) Btu's.
- **Curtailment:** Interruption of flowing natural gas supplies imposed by pipelines and LDC's as a result of the demand for service exceeding the capacity of the pipeline.
- **Day:** The period of twenty-four (24) consecutive hours beginning at 10:00 a.m. EST on any calendar day and ending at 10:00 a.m. EST on the calendar day immediately following.
- **Dekatherm:** One million (1,000,000) British thermal units abbreviated 1 Dt or MMBtu, equal to 10 therms. Roughly 1 Mcf = 1 MMBtu = 1 Dt = 10 Ccf.
- **Delivery Points:** Metering Points (gas meters) located at the facility where gas is delivered, and the State takes possession. A specific delivery point shall be designated in each purchase order for natural gas for each different site to which gas is supplied.
- **Distribution Rate:** The transportation charges the LDC charges to distribute gas from its city gate to the end user. Does not include the cost of the gas. LDC will charge a distribution rate regardless of whether it owns and sells the actual gas.
- **Distribution System:** Any group of interconnected pipe and facilities operating at a hoop stress of less than 20% specified minimum yield strength which transports gas from a common source of supply or storage facility to a customer.
- **FERC:** Federal Energy Regulatory Commission or any successor agency or body, including the Congress, which has authority to regulate the rates and services of interstate pipelines.
- **Firm Supply:** Service that anticipates no interruptions, except force majeure. Firm supply means primary firm, non-recallable primary delivery point capacity to the city gate and does not mean secondary firm supply. All natural gas specified herein as firm supply shall be primary firm supply.
- **FTS:** Firm Transportation Service
- **Fuel Retainage Losses:** Charges for fuel retention due to gas used for "PRESSURE."
- **Fuel Retention Cost:** Costs associated with interstate and/or intrastate pipeline compensation for gas used for compressor fuel and/or line losses. Such costs are based on the allowable fuel retention percentages under applicable federal and/or state regulated tariffs.
- **Gas Meter:** An instrument manufactured primarily for use in measuring, and indicating or recording the measurement of, the volume of gas that has moved through the instrument.
- **GRI:** Gas Research Institute
- **Heating Value:** The number of Btu's produced by the complete combustion, at a constant pressure, of the amount of gas that would occupy a volume of one (1) cubic foot at a temperature of 60 degrees F (60°F) if saturated with water vapor and at an absolute pressure of 14.73 psia and under standard gravitational force with air of the same temperature and pressure as the gas when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state.
- **Henry Hub:** In Louisiana where many interstate pipelines connect with each other. Physical delivery of gas can be taken at this site; however most deliveries are taken at other locations on a specific pipeline.
- **Interruptible Supply:** Service which may be interrupted with satisfactory justification such as interstate pipeline or LDC curtailment.
- **Interstate Pipeline:** Federally regulated company engaged in the business of transporting natural gas across state lines from producing regions to end use markets. Some of the interstate pipeline companies that serve the Southeast include: Transcontinental Gas Pipe Line Company (Transco), Southern Natural (Sonat), Tennessee Gas Pipeline, East Tennessee Natural Gas, and Texas Gas Transmission. Interstate pipeline companies do not own or charge for the gas, but only for

the transportation of gas through their pipeline. The charge of transportation is referred to as ‘transportation costs” or “estimated interstate basis”.

- **Intrastate Pipeline:** A company engaged in the business of transporting natural gas within the state which does not own or charge for the gas commodity, but only for the transportation of gas through its pipeline. Cardinal Pipeline Company, LLC is an example of an intrastate company that operates solely in the state, and not crossing state lines. The charge of transportation is referred to as ‘transportation costs”.
- **Interstate Transportation Costs (Interstate Basis):** The transportation cost charged by interstate pipeline companies to use their pipeline to transport gas. Comprised of demand or reservation fees, pipeline commodity charges, fuel shrinkage from compressors pumping gas to market, costs to get gas from the Henry Hub to pipelines’ pooling points and other charges.
- **Inspector:** Person designated by the utility vested with the authority to initiate action to assure compliance with the adopted codes.
- **ITS:** Interruptible Transportation Service.
- **LDC:** Local Distribution Company, also known as Local Utility Company, which transports gas from the City Gate to meter at agency (Customer).
- **LDC Cost (i.e. Local Utility Company):** All costs associated with the transportation of the natural gas from the city gate to the burnertip.
- **Line Loss:** The reduction in quantity of natural gas that results from leaks, venting, and other physical circumstances on a pipeline system.
- **LNG (Liquefied Natural Gas):** Natural gas converted to a liquid state, usually for storage purposes, by pressure and severe cooling.
- **Load Factor:** Ratio of the average amount of gas a customer takes to the peak amount of gas a customer takes in a given period.
- **Low Pressure Distribution System:** A gas distribution piping system or portion thereof which supplies gas to more than 10 customers through a common pressure reducing devices(s) at a pressure substantially the same as the pressure provided to the customer.
- **MBtu:** One thousand (1,000) Btu’s.
- **Mcf:** The quantity of gas occupying a volume of one thousand (1,000) standard cubic feet of gas at a temperature of 60 degrees F (60°F) and pressure of 14.73 psia.
- **MMBtus:** One million British Thermal Units, also known as a dekatherm (Dt).
- **Main:** Distribution pipeline that serves as a common source of supply for more than one service line.
- **Market Price:**
- **Master Meter System:** A pipe system that receives gas through a gas meter and transports that gas to or for the public, with the gas being delivered through another gas meter prior to consumption.
- **Month:** A period beginning at 10:00 a.m. EST on the first day of a calendar month and ending at 10:00 a.m. EST on the first day of the calendar month immediately following.
- **Natural Gas:** A naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth’s surface and used as a fuel. Produced from gas wells, or in association with oil (casing head) and/or residue gas resulting from processing either casing head gas and gas well gas, or both, of the quality specified herein.
- **Natural Gas Transmission Company:** Any person owning or operating for compensation, facilities for the transmission or delivery for sale of natural gas, but shall not include any person that owns or operates facilities primarily for the local

distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. s.717, et seq., or any municipalities or any agency thereof or a special district created by special act to distribute natural gas.

- **Nomination:** A request for delivery of Natural Gas for a specific quantity over a specific period of time or for its delivery at a specific point under a purchase.
- **NYMEX:** New York Mercantile Exchange. The commodity exchange based in New York where natural gas futures contracts and other energy futures are traded.
- **NYMEX Cost:** The last day NYMEX Settlement Price for the applicable month and/or NYMEX strip or monthly price for any futures transaction authorized by an Agency.
- **NYMEX Deadline:** 12:00 p.m. CT of the last trading Day of a NYMEX Gas futures contract for the applicable delivery month.
- **NYMEX Price:** The commodity price of natural gas. Sometimes referred to as the Henry Hub price because physical delivery of gas can be taken at the Henry Hub in Louisiana where many interstate pipelines connect with each other. However, most of the time, physical delivery is taken at other locations on a specific pipeline.
- **Off Peak:** Period of year when minimum demand for fuel occurs, typically April through October.
- **On Peak:** Period of year when maximum demand for fuel occurs, typically November through March.
- **On-Time Delivery:** The delivery of all ordered items to the receiving point designated by the ordering entity within the delivery time required.
- **Pack Orders:** Deliver more gas than the nominated volume when requested by a transporter.
- **Pipeline:** All parts of physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies. Pipeline for the purposes of these rules, unless stated otherwise, includes mains and service lines.
- **Pipeline Capacity:** Service provided by a pipeline for a fixed monthly reservation charge which gives a transporter the right to move up to a maximum daily quantity of gas between defined points on the pipeline's system.
- **Primary Point of Delivery:** The point where the gas enters the LDC (City Gate).
- **Primary Pipeline:** The pipeline(s) which transports the gas to the LDC (City Gate).
- **Psia:** Pounds per square inch absolute.
- **Rate:** Every compensation, tariff, charge, fare, toll, rental, and classification, or any of them, demanded, observed, charged, or collected whether directly or indirectly by any natural gas transmission company for any service relating to the transmission or sale of natural gas, and any rules, regulations, practices, terms and conditions, or contracts relating to any such transmission or sales service.
- **Rate Class:** Type of billing classification or category.
- **Receipt point:** Point which Vendor delivers gas to a transporter.
- **Regulated Segment:** Section of the gas transport system, which is under the jurisdiction of FERC and/or North Carolina Utilities Commission.
- **Replacement Price Differential:** The positive difference, if any, obtained by subtracting the lesser of (a) the price obtained by Vendor in an incremental, arm's length sale(s) to a third party of the Fixed Price Quantity, less incremental transportation charges to Vendor including location or basis adjustments, or (b) the Spot Price from the Fixed Price for the day on which the Fixed Price Deficiency Default occurred.
- **Service Line:** Distribution pipeline that transports gas from a common source of supply to a gas meter prior to consumption.

- **Shrinkage:** Reduction in volume of wet natural gas due to removal of natural gas liquids, hydrogen sulfide, carbon dioxide, water vapor, and other impurities.
- **Spot Gas:** Interruptible or best-efforts gas for specified volumes on a limited, usually monthly, basis.
- **Spot Price:** The 'Daily Midpoint' price set forth in Gas Daily in the column "Daily Price Survey" under the listing applicable to the Delivery Point geographic location for the particular day on which a Fixed Price Deficiency Default occurs.
- **Standard Cubic Foot:** Gas volume of one (1) cubic foot measured at an absolute pressure of 14.73 Psia and temperature of 60 degrees F (60°F).
- **STBA:** Supplier Transportation Balancing and Aggregation.
- **Tariff:** Compilation of all the effective rate schedules for a company, along with general terms and conditions.
- **Taxes:** Contact NC Department of Revenue at 919-733-2151 with questions concerning any relative taxes.
- **Telemetering:** Electronic remote metering.
- **Trading Day:** Any day for which a NYMEX Gas futures contract is determinable.
- **Therm:** One hundred thousand (100,000) Btu. Unit of measure of heat content.
- **Transportation Gas:** Third party owned gas delivered on the interstate pipeline system to a LDC on behalf of a customer.
- **Transportation Pipelines:** Transmission lines that transport gas to the LDC's city gate.
- **Unbundling:** Separating costs on a pipeline or distribution system and charging customers for each component (commodity, transportation, storage).
- **Utility or Operator:** Except where a different meaning clearly appears from the context, the word "utility" or "operator" shall be every person, corporation, partnership, association, public agency, municipality, cooperative gas district or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing or controlling any gas transmission or distribution facility transporting gas as defined herein and not specifically exempt from state jurisdiction by the Natural Gas Pipeline Safety Act of 1968, Public Law 90-481.
- **WACOG:** Weighted Average Cost of Gas.
- **Wellhead:** Placed on top of natural gas well sites to control flow and pressure.
- **Wellhead Price:** May also be referred to as supply price, commodity price, index price, NYMEX price or pooling price.

### 3.0 METHOD OF AWARD AND BID EVALUATION PROCESS

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#### 3.1 METHOD OF AWARD

North Carolina G.S. 143-52 provides a general list of criteria the State shall use to award contracts, as supplemented by the additional criteria herein. The Goods or Services being procured shall dictate the application and order of criteria; however, all award decisions shall be in the State's best interest.

All responsive bids will be reviewed, and award or awards will be made, based on the responsive bid(s) offering the lowest price that meets the specifications provided herein, to include any required verifications set out herein such as, but not limited to past performance, references, and financial documents.

The bid for a line item will be determined by the total all-inclusive basis cost for each natural gas service area/pipeline/utility (see **ATTACHMENT A – PRICING FORM**).



While the intent of this IFB is to award contracts by line (natural gas pipeline/utility/service area) to the responsive and responsible Bidder with the lowest cost for each line, the State reserves the right to make a single award for all lines, separate awards to different Vendors for one or more line items, to not award one or more line items or to cancel this IFB in its entirety without awarding a Contract, if it is considered to be most advantageous to the State to do so.

The State reserves the right to waive any minor informality or technicality in bids received.

### **3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION**

While this IFB is under evaluation, the responding Vendor, including any subcontractors and suppliers, is prohibited from engaging in conversations intended to influence the outcome of the evaluation. See the Paragraph of the Instructions to Vendors entitled COMMUNICATIONS BY VENDORS.

Each Vendor submitting a bid to this IFB, including its employees, agents, subcontractors, suppliers, subsidiaries and affiliates, is prohibited from having any communications with any person inside or outside the using agency; issuing agency; other government agency office or body (including the purchaser named above, any department secretary, agency head, members of the General Assembly and Governor's office); or private entity, if the communication refers to the content of Vendor's proposal or qualifications, the content of another Vendor's proposal, another Vendor's qualifications or ability to perform a resulting contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals, the award of a contract, or both.

Any Vendor not in compliance with this provision shall be disqualified from evaluation and award. A Vendor's proposal may be disqualified if its subcontractor and/or supplier engage in any of the foregoing communications during the time that the procurement is active (*i.e.*, the issuance date of the procurement until the date of contract award or cancellation of the procurement). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this IFB or inquiries directed to the purchaser named in this IFB regarding requirements of the IFB (prior to proposal submission) or the status of the award (after submission) are excepted from this provision.

### **3.3 BID EVALUATION PROCESS**

Only responsive submissions will be evaluated.

**The State will conduct an evaluation of responsive Bids, as follows:**

Bids will be received according to the method stated in the Bid Submittal section above.

All bids must be received by the issuing agency not later than the date and time specified in the IFB SCHEDULE Section above, unless modified by Addendum. Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the State.

At the date and time provided in the IFB SCHEDULE Section above, unless modified by Addendum, the bids from each responding Vendor will be opened publicly and all offers (except those that have been previously withdrawn, or voided bids) will be tabulated. The tabulation shall be made public at the time it is created. When negotiations after receipt of bids is authorized pursuant to G.S. 143-49 and 01 NCAC 05B.0503, only the names of offerors and the Goods and Services offered shall be tabulated at the time of opening. Cost and price shall become available for public inspection at the time of the award. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position.

At their option, the evaluators may request oral presentations or discussions with any or all Vendors for clarification or to amplify the materials presented in any part of the bid. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all bids should be complete and reflect the most favorable terms available from the Vendor. Prices of bid cannot be altered or modified as part of a clarification.

Bids will generally be evaluated, based on completeness, content, cost, and responsibility of the Vendor to supply the requested Goods and Services. Specific evaluation criteria are listed in Section 3.1 METHOD OF AWARD.

Upon completion of the evaluation process, the State will make Award(s) based on the evaluation and post the award(s) to **the electronic Vendor Portal (eVP)**, <https://evp.nc.gov>, under the IFB number for this solicitation. Award of a contract to one Vendor does not mean that the other bids lacked merit, but that, all factors considered, the selected bid was deemed most advantageous and represented the best value to the State.

The State reserves the right to negotiate with one or more Vendors, or to reject all original offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement, and in either case to require Vendor to submit a Best and Final Offer (BAFO) based on discussions and negotiations with the State.

### 3.4 PERFORMANCE OUTSIDE THE UNITED STATES

Vendor shall complete **ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR**. In addition to any other evaluation criteria identified in this IFB, the State may also consider, for purposes of evaluating proposed or actual contract performance outside of the United States, how that performance may affect the following factors to ensure that any award will be in the best interest of the State:

- a) Total cost to the State.
- b) Level of quality provided by the Vendor.
- c) Process and performance capability across multiple jurisdictions.
- d) Protection of the State's information and intellectual property.
- e) Availability of pertinent skills.
- f) Ability to understand the State's business requirements and internal operational culture.
- g) Particular risk factors such as the security of the State's information technology.
- h) Relations with citizens and employees.
- i) Contract enforcement jurisdictional issues.

### 3.5 INTERPRETATION OF TERMS AND PHRASES

This IFB serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the State; and (2) to provide (together with other specified documents) the terms of the contract resulting from this procurement. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether bids should be evaluated or rejected, the State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the State's needs as described in the IFB. Except as specifically stated in the IFB, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the State exercising its discretion to reject a bid in its entirety.

## 4.0 REQUIREMENTS

This Section lists the requirements related to this IFB. By submitting a bid, the Vendor agrees to meet all stated requirements in this Section, as well as any other specifications, requirements, and terms and conditions stated in this IFB. If a Vendor is unclear about a requirement or specification or believes a change in a requirement would allow for the State to receive a better bid, the Vendor is encouraged to submit these items in the form of a question during the question and answer period in accordance with the Bid Questions Section above.

### 4.1 PRICING

Bid price shall be the Vendor's all-inclusive basis cost per dekatherm for transportation and delivery to the Local Distribution Company city gate and all associated charges payable by the State to the Vendor. Complete ATTACHMENT A: PRICING WORKBOOK and upload in the Sourcing Tool. The pricing provided in ATTACHMENT A, or resulting from any negotiations, is incorporated herein and shall become part of any resulting contract.

The Vendor will demonstrate reasonableness of price by offering an aggressively competitive pricing – pricing reserved for its largest and most important accounts (throughout the life of the contract) to North Carolina, that is the same or better than provided in a current contract to similarly situated governmental entities (i.e. other State contracts, GSA, NASPO ValuePoint, Veteran's Administration, Department of Defense or other governmental entities). If the Vendor is unable to offer aggressive pricing to NC that is the same or better than given to other similarly situated governmental entities, Vendor shall include with the response a brief explanation as to why they are unable to do so. The State reserves the right to request further information such as copies of other governmental contracts, to determine the reasonableness of the price offered.

## 4.2 ESTIMATED QUANTITIES

The quantities indicated herein are estimates based on the State's historical usage and are provided for informational purposes based on usage during the previous 6-year period. No maximum or minimum quantities are guaranteed. It shall be understood and agreed that the State may purchase more or less than the estimated quantities during the contract period. The State reserves the right to increase or decrease the quantities as needed. The State shall not be obligated to purchase more than its normal requirements. The State will be responsible only for natural gas quantities consumed.

Subject to the terms and conditions of this Contract, the Vendor agrees to deliver to agencies their monthly requirements, and agencies agree to provide Vendor monthly nominations for anticipated quantities of natural gas (Delivery Schedule reflects estimated quantities only.) The sale and delivery of gas by Vendor shall be on a firm basis.

## 4.3 ADDITIONAL SAVINGS OFFERS/REBATES

This component of the Pricing Response is optional, but the State encourages Vendors to provide additional financial incentives/rebates, if possible, within the scope of this IFB, that will benefit the State. These additional incentives could include, but are not limited to additional discounts based on total spend volumes, tier pricing, rebates, additional discounts by manufacturer, etc. Additional Discount Offers shall be in addition to the discounts Vendor offers as a List Item Price. Additional Discount Offers should be provided in ATTACHMENT A: PRICING WORKBOOK.

**Additional Discounts:** As part of the pricing submittal, Vendors are being requested to propose an additional percentage discount which would be applied to all orders for the remainder of the contract term if and when the total orders against the contract exceed the provided amount, at any point during the life of the contract. Orders from all entities utilizing this contract will count toward the contract volume discount threshold.

**Rebates:** If a rebate is offered, it will be based on reported sales, on a quarterly basis (see Section 6.6 QUARTERLY REPORTS). The Vendor shall submit the rebate amount due by check with the "Contracts Number," "Report Amount," and "Report Period" on either the check stub or other remittance materials. The payment shall be made by check as described herein.

**Checks shall be payable to:** NCDOA, Division of Purchase & Contract

**Checks shall be mailed to:** NCDOA, Division of Purchase & Contract, Contract Manager  
1305 Mail Service Center  
325 N. Salisbury Street  
Raleigh, NC 27603

All discounts in Vendor's bid shall remain in effect for the entire contract period and shall not be decreased. However, the discount may be increased, and any such increase shall remain in effect for the remainder of the contract period and any subsequent extensions. Volume or tier discounts, if offered, shall apply to purchase orders placed for delivery to the same location. Vendors may provide volume or tier discounts to orders that include multiple delivery points from the same agency.

The State reserves the right to accept or reject all or part of the proposed Additional Discount Offers as part of a Vendor's Total Price Submittal Value. The State has sole discretion to not assign value to Vendor's proposed Additional Discount Offers which the State cannot quantify or to give only partial value for Additional Discount Offers. Vendors may offer the State additional discounts using the Additional Discount Offers within ATTACHMENT A-PRICING SUBMITTAL WORKBOOK.

#### 4.4 VENDOR QUALIFICATION AND EXPERIENCE

Bids will be accepted only from established natural gas marketers, who are identified by the respective LDC on their approved marketer list, who have access to a supply of natural gas from which it is willing to make sales to the State, subject to completion and continuance of necessary transportation arrangements.

No bid will be considered unless Vendor is authorized to transfer gas under Section 311 of the Natural Gas act of 1978 or be able to enter into an agreement with the LDC to gain access to appropriate interstate pipeline for delivery to using agency.

Vendor must be conversant with all Federal, State and North Carolina Utilities Commission tariffs/regulations governing each individual utility territory for which it submits a bid, including, but not limited to load aggregations, balancing and individual utility programs.

Compliant with above requirements? Yes ☐ No ☐

The State may make investigations as deemed necessary to determine the capability of the Vendor to provide the required services. The Vendor shall furnish the State information for this purpose as may be requested. The State reserves the right to reject any bid if the information submitted by, or investigation of Vendor fails to satisfy the State that such Vendor is qualified to perform the obligations of the Contract or is deemed not to be in the best interest of the State.

#### 4.5 PRODUCT IDENTIFICATION

##### SUITABILITY FOR INTENDED USE

Vendors are requested to offer only items directly complying with the specifications herein or comparable items which will provide the equivalent capabilities, features and diversity called for herein. The State reserves the right to evaluate all bids for suitability for the required use and to award the one best meeting requirements and considered to be in the State's best interest.

#### 4.6 TRANSPORTATION AND IDENTIFICATION

The Vendor shall pay all costs associated with the transportation of the gas to the LDC city gate. The State (i.e. ordering agency) shall enter into a separate agreement with the LDC and pay all costs associated with the transportation of gas from the LDC city gate to the existing meter at each agency. An Agency shall provide any LDC required forms to give the Vendor authorization to act on the agency's behalf.

#### 4.7 ORDERING INFORMATION

Upon award of the Contract, the Vendor shall provide the State with a dedicated email address, toll-free phone number, and, if applicable, a fax number that users of the Contract can utilize to conduct business with the Vendor. If orders are required to be placed with a Vendor's authorized dealer(s), phone numbers and email addresses (and fax numbers, if applicable) should be provided for all authorized dealers. Regardless of the ordering channel utilized (E-Procurement, phone, email, or fax if necessary) or payment method (direct payment, credit card), the State shall receive contract pricing when purchasing contract items from the Vendor.

#### 4.8 TITLE TRANSFER

The State of North Carolina takes title at the city gate sales point. Notwithstanding transfer of title to the State at the sales point(s), Vendor shall be the State's agent to exercise control of the gas being delivered until gas has been delivered by the LDC to the customer's account meter. Vendor shall be responsible for the coordination and scheduling of transportation volumes including completing all arrangements for transportation services for delivery of the natural gas to existing meter at each agency.

#### 4.9 NOMINATIONS

Agency shall notify the Vendor by email (or by fax, if applicable) **not less than five (5) calendar days** before the first day of each delivery month, the estimated monthly and/or daily gas nomination. If agreed to by the Vendor, nominations may be submitted to Vendor at a later date. Vendor shall take no formal action to supply gas unless a nomination has been received. Vendor should ensure the using agency submits a nomination each month, even if the nomination is zero. If applicable, Vendor shall be responsible for notifying Agency of any mid-month adjustments to agency nomination. If nominations are not within the specified

time requirement, the Vendor may contact the Contract Manager for assistance. There shall be no vendor terms and conditions referenced on the nomination form. The State's terms and conditions incorporated herein shall be the only terms of the resulting Contract.

Agency shall pay for the actual volume of gas consumed at each individual metering location, subject to the below Force Majeure clause.

#### **4.10 TITLE WARRANTY**

Vendor warrants title to all natural gas delivered by it and warrants that it has the right to sell the same and that such natural gas is free from liens and adverse claims of every kind. Vendor shall indemnify and save the State harmless against all loss, damage and expense of every kind on account of adverse claims which accrue before delivery to the State.

#### **4.11 BALANCING**

The Vendor is responsible for all supply/demand balancing for the agencies under the Contract. This is a full requirements' solicitation. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected transporter(s). Each party shall give the other party timely prior notice of the quantities of gas to be delivered and purchased, such notice should be sufficient to meet the requirements of all transporters involved in the transaction. Should either party become aware that the actual deliveries at the delivery point are greater or less than the scheduled gas, such party shall promptly notify the other party.

#### **4.12 CURTAILMENT/INTERRUPTIONS**

Curtailment is defined as interruption of flowing natural gas supplies imposed by pipelines and LDC's as a result of the demand for service exceeding the capacity of the pipeline. If an agency nominates gas, and the LDC and any available pipeline is flowing supply, Vendors are expected to supply gas for the entire month and agency is required to buy gas for the entire month. The State agrees to be interrupted only when Vendor can provide satisfactory justification of curtailments or interruptions that occur on pipelines or at the LDC level, as a result of demand for supply exceeding capacity. Where firm supply is specified, Vendor is expected to deliver natural gas at all times. Note that firm supply means primary firm non-recallable primary delivery point capacity to the city gate and not secondary firm supply.

Vendor shall notify the affected agency and Contract Manager of impending interruptions immediately by telephone and shall follow up with a written notification sent by e-mail. Should curtailment/interruption occur, the Vendor shall provide to the agency satisfactory written justification, including documentation from the pipeline or LDC which clearly describes details of the curtailment/interruption and should indicate the name, number and location of the station where curtailment takes place. Failure to provide the agency written justification within twenty-four (24) hours of pipeline curtailment may be sufficient justification for the agency to apply a charge-back penalty, which shall be the difference between this Contract's natural gas price versus the open market purchase price of replacement gas or the utility supplied price, including any LDC imposed penalties.

Vendor shall notify the agency, and LDC if applicable, of resumption of service immediately by telephone and shall follow up with a written notification sent by e-mail. Agency written notification shall indicate the date/time of the interruption, date/time full flow was resumed and the volumetric impact of the interruption on the agency's nomination. Vendor shall be liable for any penalties caused by Vendor's failure to inform the agency, and LDC if applicable, within twelve (12) hours of resumption of service.

#### **4.13 FORCE MAJEURE**

Curtailment/Interruption of one (1) or more pipelines will not be considered a force majeure situation. Except for the State's obligations to make payment for gas delivered hereunder, neither party hereto shall be liable for any failure to comply with the terms of the Contract when such failure is due to "force majeure" as hereinafter defined. The term "force majeure" as employed in this specification shall mean acts of God, strikes, lockouts, or industrial disputes or disturbances, civil disturbances, arrests and restraints from rulers or people, interruption by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure or a delay in securing labor or materials, including delay in securing or inability to secure materials by reason of allocations promulgated by

authorized governmental agencies, epidemics, landslides, lighting, earthquakes, fires, storms, floods, washouts, explosions, breakage or freezing of pipelines, inability to obtain easements or rights-of-way, the making of repairs or alterations to lines of pipe or plants, mechanical breakdown of either parties' facilities, the failure of any local distributing company to accept gas for delivery for any reason, force majeure of any third party, partial or entire failure of gas supply or any other cause, whether the kind enumerated above or otherwise so long as the causes are not reasonably within the control of the party claiming "force majeure". The "force majeure" shall, so far as possible, be remedied with reasonable dispatch. The settlement of strikes or lockouts or industrial disputes or disturbances shall be entirely within the discretion of the party having the difficulty and the above requirement that any "force majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts, or individual disputes or disturbances by acceding to the demands of any opposing party therein when such course is inadvisable in the discretion of the party having the difficulty.

For purposes of this clause "force majeure" which interferes with the State's ability to use natural gas shall be deemed to occur **no later than twelve (12) hours** after receipt of notification thereof by the State.

In the event (i) a transaction has a firm obligation, and (ii) Vendor is unable to sell and deliver the quantity for such transaction as a result of an event of force majeure or an Agency is unable to purchase and receive the quantity for such transaction as a result of an event of force majeure, and (iii) the delivery period for such transaction is at least one calendar month, and (iv) the City Gate Price is a Fixed Price (as defined below), then (a) if the FOM Price (as defined below) is above the Fixed Price, Vendor shall pay the Agency for each MMBtu of gas not delivered and/or received, the difference between the FOM Price and the Fixed Price, or (b) if the FOM Price is below the Fixed Price, the Agency shall pay Vendor for each MMBtu of gas not delivered and/or received, the difference between the Fixed Price and the FOM Price. "Fixed Price" means a City Gate Price for a transaction that is expressed as a flat dollar amount as a result of an Agency entering into a futures transaction that resulted in a fixed price for some or all of the Agency's monthly requirements. "FOM Price" means the price per MMBtu for the first day of the month of delivery, as published in the first issue of a publication commonly accepted by the natural gas industry (selected by the Vendor in a commercially reasonable manner) for the calendar month of such force majeure event for Transco Zone 5 delivery.

#### 4.14 NOTIFICATION

If Vendor is unable to meet contractual requirements in whole or in part, it shall immediately notify the State of that fact, enabling the State to take appropriate action. Such notification shall be in writing and shall be directed to the Division of Purchase and Contract, Contract Manager. The effective date of such termination shall take into consideration the ability of State facilities to file nominations in a timely manner for the following month's deliveries.

#### 4.15 DISASTER/EMERGENCY

In the event a disaster/emergency is declared by Executive Order, or that the State Purchasing Officer determines pursuant to his/her authority under Title 1, Chapter 5 of the North Carolina Administrative Code that an emergency exists requiring the prompt and immediate delivery of natural gas, the agency reserves the right to obtain natural gas from any source, including but not limited to this Contract. Vendor shall not be entitled to any claim or lost profits for natural gas procured from other sources pursuant to this paragraph.

#### 4.16 REFUND

The State will be entitled to a refund of any substantiated overcharge discovered as allowable by law **within five (5) years** after the billing date. Such refunds shall be made or credited **within thirty (30) days** after receipt of a claim and shall bear interest (from the date of erroneous payment) at the rate specified by the State.

#### 4.17 CANCELLATION SETTLEMENT

In the event of any cancellation of a Contract resulting from this solicitation, a cancellation settlement will be paid. As of the effective cancellation date, the parties shall determine, in good faith and in a commercially reasonable manner,

- (i) the amount owed (whether or not then due) by each party with respect to all gas delivered and received between the parties under canceled transactions on and before the cancellation date and all other applicable charges relating to such deliveries and receipts, for which payment has not yet been made, and

- (ii) (ii) the Market Value (as defined below) of each canceled transaction. The Contactor shall liquidate and accelerate each canceled transaction at its Market Value, ensuring that any amount equal to the difference between such Market Value and the Contract Value (as defined below) of such canceled transaction(s) shall be due to the Agency under the canceled transaction(s) if such Market Value exceeds the Contract Value and to the Vendor if the opposite is the case; and where appropriate, discount each amount due to present value in a commercially reasonable manner as of the effective cancellation date. This discounting shall take into account the period between the effective cancellation date and the date on which such amount would have otherwise been due pursuant to the relevant canceled transaction(s).

For purposes of this section, "Contract Value" means the amount of gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of gas remaining to be delivered or purchased under a transaction multiplied by the Market Price. "Contract Price" means a price of a contract resulting from this bid offering for a transaction that is expressed as a flat dollar amount and may include a future transaction that fixed a NYMEX price for some or all of the Agency's monthly requirements. "Market Price" means the market price for a similar transaction at the Transco Zone 5 city gate delivery points determined mutually by the parties in a commercially reasonable manner. To ascertain the Market Value, the parties may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the effective cancellation date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the parties mutually in a commercially reasonable manner.

#### 4.18 AUTHORIZED DEALERS

An awarded Vendor may utilize approved, Authorized Dealers, to participate as alternate distribution sources for Vendor. Authorized Dealers may be added at any time during the contract term at the discretion of the Vendor, provided that they agree to comply with all terms and conditions of the awarded contract, with no set minimum or maximum number of Authorized Dealers that may be approved. Such participation is subject to the following conditions:

##### Designation of Authorized Dealer(s)

Vendor shall specify whether orders must be placed directly with Vendor or may be placed directly with Authorized Dealer(s). If Authorized Dealer(s) are designated to fulfill orders under this Contract, issue invoices and receive payment, Vendor must provide P&C, a list of those designated authorized dealers submitted with its Bid. P&C will require a vendor registration process for all Vendors recommended for contract award and their authorized dealers through the E-Procurement System. Authorized Dealers must register as an e-Procurement vendor with the State of North Carolina upon contract award and must comply with all terms and conditions of this IFB. Awarded Vendors remain responsible for contract compliance by its Authorized Dealers, and neither an order placed with, or items delivered by, a Vendor's Authorized Dealer shall relieve the Vendor from any obligation under this contract.

**Will Vendor maintain Authorized Dealers:** ☐ Yes ☐ No

**Attached List of Authorized Dealers:** ☐ Yes ☐ No

##### Modifications in Authorized Dealer List

If a Vendor allows Authorized Dealers to participate in the Contract, post-award requests to add or delete Authorized Dealers or to modify Authorized Dealer information must be submitted to P&C's Contract Manager for prior approval.

#### 4.19 HUB PARTICIPATION

Pursuant to North Carolina General Statute G.S. 143-48, it is State policy to encourage and promote the use of small, minority, physically handicapped, and women contractors in purchasing Goods and Services. As such, this IFB will serve to identify those Vendors that are minority owned or have a strategic plan to support the State's Historically Underutilized Businesses program by

meeting or exceeding the goal of 10% utilization of diverse firms as 1st or 2nd tier subcontractors. Vendor shall complete ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION.

#### **4.20 VENDOR'S REPRESENTATIONS**

If Vendor's bid results in an award, Vendor agrees that it will not enter into any agreement with a third party that may abridge any rights of the State under the Contract. If any services, deliverables, functions, or responsibilities not specifically described in this solicitation are required for Vendor's proper performance, provision and delivery of the service and deliverables under a resulting 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, Vendor shall furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and/or other Deliverables.

#### **4.21 FINANCIAL STABILITY**

As a condition of contract award, the Vendor must certify that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor 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

Each Vendor shall certify it is financially stable by completing the ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential performance issues from contracting with a Vendor that is financially unstable. This Certification shall be deemed continuing, and from the date of the Certification to the expiration of the Contract, the Vendor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification.

#### **4.22 REFERENCES**

Vendors shall upload to the Sourcing Tool at least three (3) references, using ATTACHMENT E: CUSTOMER REFERENCE FORM, for which your company has supplied the exact services offered. The State may contact these users to determine quality level of the offered services; as well as, but not limited to user satisfaction with Vendor performance. Information obtained may be considered in the evaluation of the bid.

#### **4.23 INSURANCE REQUIREMENTS**

A. Default Insurance Coverage from the General Terms and Conditions applicable to this Solicitation:

☒ Contract value in excess of \$1,000,000.00

#### **4.24 LOBBYING ACTIVITY CERTIFICATION FOR FEDERAL GRANTS**

Federal law prohibits recipients of federal funds, whether through grants, contracts, or cooperative agreements, from using those funds to influence or attempt to influence (lobby) a federal official in connection with obtaining, extending, or modifying any federal contract, grant, loan, or cooperative agreement. Further, federal law requires that applicants for federal funds certify:

- that they abide by the above restriction;
- that they disclose any permissible (non-federal) paid lobbying on the Federal Awards being applied for; and
- that such certification requirements will also be included in any subawards meeting the applicable thresholds.

Vendors must complete and submit the CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS and the OMB STANDARD FORM LLL when responding to this solicitation.



## 5.0 SCOPE OF WORK AND SPECIFICATIONS

The State requires the services of a qualified Vendor for the provision of natural gas (interruptible and firm) through each of the four (4) natural gas service territories/pipelines regulated by the North Carolina Utilities Commission, namely:

1. Piedmont Natural Gas,
2. PSNC Energy (Dominion),
3. Frontier Energy, and
4. Toccoa.

### 5.1 NORTH CAROLINA UTILITIES COMMISSION RULES AND REGULATIONS

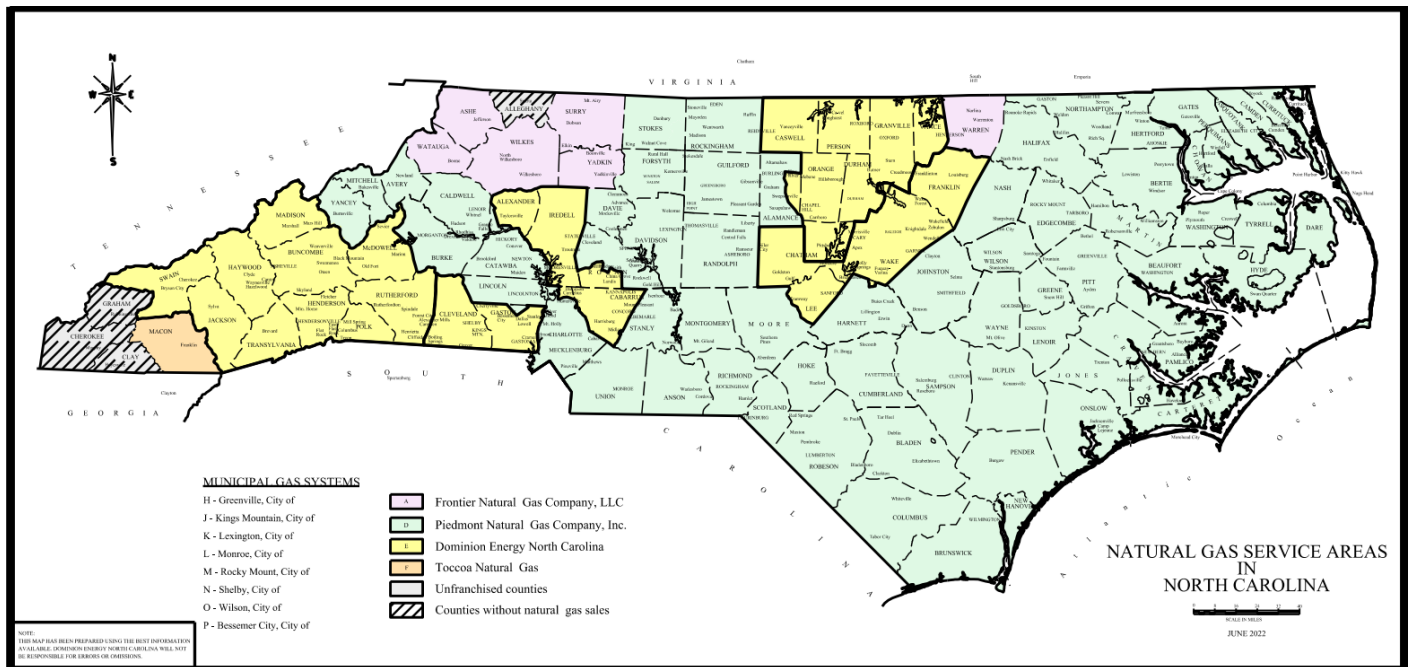
The Vendor shall abide by the North Carolina Utilities Commission rules and regulations for all natural gas transactions and practices under this Contract. North Carolina Utilities Commission information can be downloaded from <http://www.ncuc.commerce.state.nc.us/>.

#### 5.1.1 NORTH CAROLINA NATURAL GAS COVERAGE AREAS

The Vendor shall provide coverage for at least one (1) of the four (4) natural gas pipelines/territories/utilities regulated by the North Carolina Utilities Commission (NCUC), namely:

1. Frontier Energy – purple,
2. Piedmont Natural Gas – green,
3. PSNC Energy (Dominion) – yellow, and
4. Toccoa – orange, as depicted in the map below.

Referenced Map - [gasmmap.pdf \(ncuc.gov\)](#)



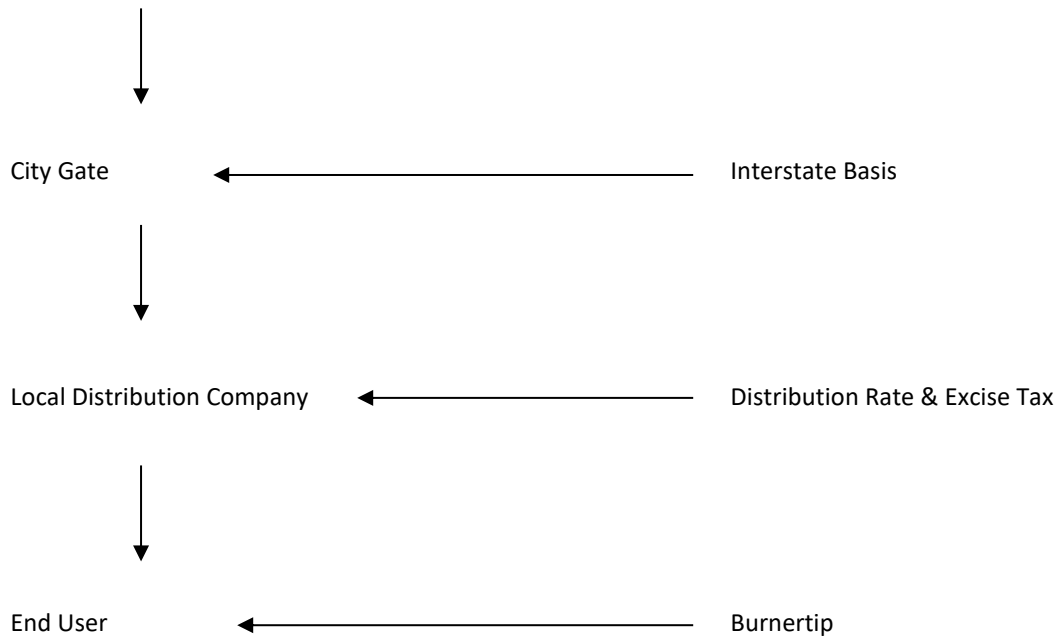
#### 5.1.2 GRAPHIC REPRESENTATION OF NATURAL GAS DELIVERY PROCESS IN NORTH CAROLINA

Henry Hub (gas supply)



NYMEX Price

Interstate Pipelines Transportation



## 5.2 VENDOR AND CUSTOMER/AGENCY RESPONSIBILITIES

### 5.2.1 VENDOR RESPONSIBILITIES

- a. Placement of nominations for natural gas to LDC in accordance with LDC's nomination procedures and schedule.
- b. Provision of written confirmation of volume nomination to user agencies.
- c. Advisories to user agencies on market conditions/trends, to enable cost savings targeted timing of natural gas purchases from the from the LDC.
- d. Assistance to user agencies in the establishment of transport relationships with the LDC.
- e. Collection of e-mailed (or faxed, if applicable) meter reads from the user agency as deemed reasonably necessary in order to serve the agency under utilities' programs.
- f. Completion, execution and submission of the Utility's aggregation form as required by the LDC.
- g. Provision of volume balance management and monitoring of volumes used.
- h. Creation of a pool of customers within the LDC's pooled balancing program to better facilitate its daily balancing responsibilities. This pool will consist of customers included in this solicitation but may also include other customers served by the Vendor within the LDC territory.
- i. Payment of any penalties levied, or the extra cost to use LDC replacement gas, due to imbalance or volume management error attributable to the Vendor or resulting from non-compliance with any existing or future regulations or contracts.
- j. Assistance in the verification of monthly invoices from the LDC.
- k. Collection of usage data from the agency as may be deemed necessary in order to serve the agency under utilities' programs.
- l. Completion of any additional documentation as may be deemed reasonably necessary by the State or LDC.
- m. Any and all daily/end-of-month "cashouts" as imposed by the LDC, if applicable.
- n. Billing of agency for actual quantities of natural gas consumed.
- o. Securing of adequate upstream capacity (and storage, when applicable) to ensure firm service.
- p. Own the balance control account for all agencies, in accordance with the LDC, when applicable.

- q. Any excessive balancing charge, when applicable.
- r. Conduct of a minimum of three (3) initial training sessions at contract commencement and one (1) annual training on the usage of this Contract and procedures.

### 5.2.2 AGENCY RESPONSIBILITIES

- a. Placement of nominations for natural gas to the Vendor by email or facsimile not less **than five (5) calendar days** prior to the first day of the month of delivery or at a later date if mutually agreed upon by Vendor and the agency.
- b. Prompt and timely notification of the Vendor of any changes in nomination requirements at any time during the month. Notifications will be by telephone, with a follow-up written notification.
- c. Supply of Vendor usage data on an 'as-needed' basis as may be required by the Vendor.
- d. Timely completion of LDC aggregation form upon receipt from Vendor, for submission to LDC.
- e. Completion of any additional documentation as may be deemed reasonably necessary by the Vendor and LDC.
- f. Any additional costs incurred by the agency as a result of the agency's failure to supply Vendor with reasonably necessary meter reads as may be requested.

### 5.3 NATURAL GAS QUALITY AND MEASUREMENT

All Gas delivered by Vendor Contractor shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

### 5.4 OPTIONAL VALUE-ADDED SERVICES

Vendors may provide Value-Added Services along with description and pricing offered on the ATTACHMENT A: PRICING WORKBOOK. During the award process, the State has the option to negotiate the services being offered. Please be advised that any value-added services offered are optional and will not be included in the bid evaluation process; however, they may be taken into consideration at the State's discretion. The State does not imply or intend that any value-added service will be deemed acceptable.

### 5.5 DEVIATIONS

The nature of all deviations from the Specifications listed herein shall be clearly described by the Vendor. Otherwise, it will be considered that services offered by the Vendor are in strict compliance with the Specifications provided herein, and the successful Vendor shall be required to provide conforming services. Deviations shall be explained in detail on an attached sheet, titled DEVIATIONS. However, no implication is made or intended by the State that any deviation will be acceptable. Do not list objections to the North Carolina General Terms and Conditions in this section.

## 6.0 CONTRACT ADMINISTRATION

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All Contract Administration requirements are conditioned on an award resulting from this solicitation. This information is provided for the Vendor's planning purposes.

State Contract Administrator: Shayla Parker, [shayla.parker@doa.nc.gov](mailto:shayla.parker@doa.nc.gov), 984 236 0233.

State Contract Manager: Austin Kiziah, [austin.kiziah@doa.nc.gov](mailto:austin.kiziah@doa.nc.gov), 984 236 0237.

Note: In the event the State's Contract Administrator or Contract Manager changes, notification will be sent to the Vendor's Contract Manager and the Contract Synopsis on the DOA P&C website will be updated.

## 6.1 CONTRACT MANAGER AND CUSTOMER SERVICE

The Vendor shall be required to designate and make available to the State a Contract Manager. The Contract Manager shall be the State's point of contact for contract related issues and issues concerning performance, progress review, scheduling, and service.

Contract Manager Point of Contact	
Name:	
Office Phone #:	
Mobile Phone #:	
E-mail:	

The Vendor shall be required to designate and make available to the State for customer service. The customer service point of contact shall be the State's point of contact for customer service-related issues.

Customer Service Point of Contact	
Name:	
Office Phone #:	
Mobile Phone #:	
E-mail:	

## 6.2 PROCEDURE MANUAL

Vendor shall submit a detailed procedure manual to the Contract Manager, not later than two (2) weeks after award. The manual shall be prepared in a straightforward, simple, concise manner and shall include examples of the nomination form to be used, invoices (marketer and LDC), reports (monthly and annual), curtailment notification form, definition of terms, balance penalties how/when will be accessed, list of gas taxes/how calculated (local, state, federal), an explanation on how to interpret the reports to be provided, links to information sources (Platt's, NYMEX, Inside FERC's Gas Market Report, Gas Daily, federal/state regulatory issues, LDC issues, tariffs, tariff changes, pipeline regulations). The procedure manual will be linked to the Contract that will be located at <http://www.pandc.nc.gov/numlistt.asp>. The State shall review/approve the manual prior to dissemination to agencies.

## 6.3 AGENCY TRAINING

Vendor shall conduct a minimum of three (3) agency webinar training sessions of appropriate length within four (4) calendar weeks of contract award. The training shall cover the principles, policies and procedures of gas purchasing, as well as the interpretation and use of management reports. A copy of the approved procedure manual should be provided to participants.

If contract renewal option is exercised, the Vendor shall conduct a minimum of one (1) annual webinar session, prior to the heating season to cover principles, policies and procedures of gas purchasing and to advise agencies on strategic planning, operational issues, change in regulations, personnel, etc.

## 6.4 ELECTRONIC PRODUCT CATALOG

Vendors shall utilize the Ordering Instructions Solution for managing services using the State's NC E-Procurement Services to develop and manage a catalog solution.

### 6.4.1 Ordering Instructions Solution

Vendor will be required to provide the sales representative's contact information at the time of award. If selected for contract award, the State will work with awarded Vendor(s) and the E-Procurement team to create catalogs that meet the requirements for ordering instructions depending on the complexity of the awarded contract and the number of utility pipelines awarded.

## 6.5 CONTRACT REVIEW MEETINGS

The Vendor, at the request of the State, shall be required to meet periodically on a quarterly basis with the State for Project Review meetings. The purpose of these meetings will be to review project progress reports, discuss Vendor and State performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

Business Review meetings shall be scheduled **semi-annually**, Business review meetings shall be presented by the Vendor and be inclusive of the following:

1. Spend overview (State Agency Spend) FY Comparison.
  - a. Volume Discount.
2. Product Cost Savings from timed natural gas purchases, based Vendor's market/price insights.
3. Product Accuracy Rate – Percentage of nominations fully fulfilled without post nomination corrections.
4. Curtailments/Interruptions.
5. Sustainability Efforts and Results.
6. Additional Discounts Exercised.
7. Rebates.
8. Challenges.
9. Improvement Ideas.

## 6.6 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost to the State. A continuous improvement effort consisting of various ideas to enhance business efficiencies as performance progresses.

## 6.7 PERIODIC QUARTERLY SPEND REPORTS

The Vendor shall be required to provide Sales Management Reports to the above designated Contract Manager on a Quarterly, basis. This report shall include, at a minimum, information concerning:

1. Sales Report (total cost) by State entity, to include agencies, community colleges, universities, school systems, local government entities.
2. Sales Report Category, Natural Gas Purchased (LDC), Quantity Nominated, Quantity Consumed, Unit of Measure, Contract Price, NYMEX Settlement Price, Any Additional Costs Incurred, Ordering Entity, Delivery Location (city gate) and Order Month.

These reports shall be well organized and easy to read. The Vendor shall submit these reports electronically, to include using the [Vendor Quarterly Spend Data Report](#). The Vendor shall submit the reports in a timely manner and on a regular schedule as agreed by the parties.

Vendor shall submit the Quarterly Sales Management Reports by the 15<sup>th</sup> of the month following the end of the quarter. The Quarterly Management Report delivery schedule is included below:

**By October 15<sup>th</sup>:** Q1 Quarterly Management Report for July – September.

**By January 15<sup>th</sup>:** Q2 Quarterly Management Report for October – December.

**By April 15<sup>th</sup>:** Q3 Quarterly Management Report for January – March.

**By July 15<sup>th</sup>:** Q4 Quarterly Management Report for April – June.

This schedule aligns with the State’s fiscal year. If the contract start date does not align with the start of a quarter, the initial Quarterly Management Report shall be for the period from the contract start date to the end of the existing calendar quarter. Timely submission of all reports shall be a material term of this Contract and failure to do so shall constitute a default.

Additional related sales information and/or details on user purchases may be required by the State and must be supplied within thirty (30) days of any such request. A template for any such reports may be provided by the State, at its discretion.

## 6.8 INVOICES

Vendor shall invoice the Purchasing Agency. The standard format for invoicing shall be Single Invoices meaning that the Vendor shall provide the Purchasing Agency with an invoice for each preceding month. Invoices shall include detailed information to allow Purchasing Agency to verify that pricing is in accordance contract terms. At a minimum, the following fields shall be included on all invoices:

- a. Vendor’s Billing Address.
- b. Customer Account Number.
- c. NC Contract Number.
- d. Buyers Order Number
- e. Quantity of natural gas nominated by the agency.
- f. Quantity of natural gas delivered to the city gate.
- g. Quantity of natural gas consumed by the agency.
- h. Cost of gas per dekatherm delivered to the city gate.
- i. Adjustments made (balancing).
- j. Final total bill to be paid.

**Note: Agency will receive a separate invoice from the LDC (Local Distribution Company, also known as Local Utility Company).**

## 6.9 DISPUTE RESOLUTION

During the performance of the Contract, the Parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State’s Contract Manager for resolution. Any claims by the State shall be submitted in writing to the Vendor’s Project Manager for resolution. The Parties shall agree to negotiate in good faith and use all reasonable efforts to resolve such dispute(s).

During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this contract. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute

cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute.

## **6.10 POST AWARD PRODUCT SUBSTITUTION, ADDITIONS, & REMOVALS**

Post-Award product substitutions are not permitted without prior written approval from the Contract Administrator. Proposed substitutions shall be of the same or higher quality and at the same or lower price as the original item. Failure of the Vendor to comply with this requirement shall constitute sufficient cause to hold the Vendor in default or for removal from the Contract.

The services included in this IFB are expected to cover the State's needs for the term of the Contract. In the case that the State's needs change over the term of the Contract, the State reserves the right to add additional services to the Contract that can be provided by the awarded Vendor. The price for these added services will be mutually agreed to by the State and the Vendor but are assumed to be priced at a discount similar to what is being offered on the services listed in the IFB.

## **6.11 PRICE ADJUSTMENTS**

Prices proposed by the Vendor shall be firm against any increase for Three (3) from the effective date of the Contract.

Price increase requests shall be submitted in writing to the Contract Manager, which shall include the reason(s) for the request and contain supporting documentation for the need. Price increases will be negotiated and agreed to by both the State and Vendor in advance of any price increase going into effect. The State is not obligated to accept pricing adjustments or increases and reserves the right to accept or reject them in part or in whole. Price de-escalation or decreases may be requested by the State at any time.

It is understood and agreed that orders will be shipped at the established contract prices in effect on the date an order is placed. Invoicing that deviates from this provision may result in contract cancellation.

## **6.12 CONTRACT CHANGES**

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

## **6.13 TAXES**

No taxes shall be included in any bid prices.

## **6.14 ATTACHMENTS**

All attachments to this IFB are the copies found within the Ariba Sourcing Tool, and are incorporated herein, and shall be submitted by responding in the Sourcing Tool.

**The remainder of this page is intentionally left blank.**

**ATTACHMENT K: FEDERAL REQUIREMENTS AND SPECIAL CONDITIONS*****for MATERIALS, EQUIPMENT and SUPPLIES*****1. General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Act, as amended. References include, but are not limited to, the Master Agreement FTA MA (14), dated October 1, 2007; FTA Circular 4220.1E, dated June 19, 2003; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:****"BIDDER" AND "CONTRACTOR"****"PURCHASER" AND "OWNER"****2. Federal Changes**

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, Procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**3. Notification of Federal Participation**

In the announcement of any third-party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Purchaser agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract (Public Law 102-141).

**4. Conflict of Interest**

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

**5. Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying



contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

***The requisite "Lobbying Certification" is included as ATTACHMENT B (attach Standard Form-LLL if necessary) and must be executed for contracts of \$250,000 or more and prior to the award of the contract.***

## 6. Disadvantaged Business Enterprises

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101. The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **4.31%**.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the {insert agency name}. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**
- d. The contractor must promptly notify {insert agency name}, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of {insert agency name}.

## 7. Civil Rights

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed,

national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4701.1A, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration recipients", May 13, 2007.

**(2) Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

**(3) Nondiscrimination on the Basis of Age** – The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.

**(4) Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions

of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

(5) **Access to Services for Persons with Limited English Proficiency.** The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005.

(6) **Environmental Justice.** The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

(7) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and

Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq.*, and any amendments to these laws.

(8) **Other Nondiscrimination Statutes.** The Contractor agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to this Contract.

(9) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## 8. Clean Air Act

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7414 as amended and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(c) The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with Federal Assistance provided by FTA.

## 9. Clean Water

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with Federal assistance provided by FTA.

## 10. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. subsection 4321 *et seq.* in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994, FTA statutory requirements on environmental matters at 49 U.S.C. section 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.* and joint FHWA FTA regulations, "environmental Impact and

Related procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision-making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623. As a result of enactment of 23 U.S.C. §§ 139 and 326 as well as amendments to 23 U.S.C. § 138, environmental decision-making requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59), " 71 Fed. Reg. 66576 et seq. November 15, 2006 and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

#### 11. **Energy Conservation**

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

#### 12. **Cargo Preference**

46 U.S.C. 55305 and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Owner, so that additional requirements and clauses may be attached to this Contract.

#### 13. **Buy America**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing. Buy America requirements state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waiver requirements are listed in 49 CFR 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Small purchases (currently less than \$250,000) made with capital, operating, or planning funds are also exempt from the Buy America requirements.

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Effective June 20, 2018 small purchases (under the \$250,000 threshold) made with FTA funds, will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price".**

***These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to the purchaser the appropriate Buy America certification (Attachment C or H) with all bids where FTA funds are provided, except those subject to a general waiver or less than \$250,000.***

**BIDS OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE.** The certification requirement does not apply to lower tier subcontractors.

**14. Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**15. Debarment and Suspensions**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **(procuring agency)**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **(procuring agency)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, 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.

The Owner agrees and assures that it's third party contractors and lessees will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any third

subagreement, lease or third party contract. (New amendment to regulation adopting the optional lower tier coverage for tiers lower than the first tier below a covered nonprocurement transaction ( Fed. Reg. 62394, Oct. 25, 2006).

The Owner will be reviewing all third party contractors under the Excluded Parties Listing System at <http://epls.gov/> before entering into any contracts.

***The requisite Debarment and Suspension Certification is included as ATTACHMENT I (attach additional statement if necessary) and must be executed for contracts of \$25,000 or more and prior to the award of the contract.***

**16. Recycled Products**

The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000. These requirements flow down to all to all contractor and subcontractor tiers.

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

**Paper and paper products**, excluding building and construction paper grades.

**Vehicular products:**

- (a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils;
- (b) Tires, excluding airplane tires;
- (c) Reclaimed engine coolants, excluding coolants used in non-vehicular applications.
- (d) Rebuilt vehicular parts.

**Construction products:**

- (a) Building insulation products, including the following items:
  - (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
  - (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
  - (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
  - (4) Spray-in-place insulation, including but not limited to foam-in- place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
- (c) Cement and concrete, including concrete products such as pipe and block containing:
  - (1) Coal fly ash;
  - (2) Ground granulated blast furnace slag (GGBF);
  - (3) Cenospheres; or
  - (4) Silica fume from silicon and ferrosilicon metal production.
- (d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.
- (f) Shower and restroom dividers/partitions containing recovered plastic or steel.
- (g) (1) Consolidated latex paint used for covering graffiti; and

(2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.

- (h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
- (i) Flowable fill containing coal fly ash and/or ferrous foundry sands.
- (j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.
- (k) Modular threshold ramps containing recovered steel, rubber, or aluminum.
- (l) Nonpressure pipe containing recovered steel, plastic, or cement.
- (m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

**Transportation products:**

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.
- (b) Parking stops made from concrete or containing recovered plastic or rubber.
- (c) Channelizers containing recovered plastic or rubber.
- (d) Delineators containing recovered plastic, rubber, or steel.
- (e) Flexible delineators containing recovered plastic.

**Miscellaneous products:**

- (a) Pallets containing recovered wood, plastic, or paperboard.
- (b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.
- (c) Industrial drums containing recovered steel, plastic, or paper.
- (d) Awards and plaques containing recovered glass, wood, paper, or plastic.
- (e) Mats containing recovered rubber and/or plastic.
- (f) (1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.
- (2) Sign supports and posts containing recovered plastic or steel.
- (g) Manual-grade strapping containing recovered steel or plastic.
- (h) Bike racks containing recovered steel or plastic.
- (i) Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

**Park and recreation products:**

- (a) Playground surfaces and running tracks containing recovered rubber or plastic.
- (b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.
- (c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.
- (d) Playground equipment containing recovered plastic, steel, or aluminum.

**Landscaping products:**

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.
- (b) Compost made from yard trimmings, leaves, grass clippings, and/ or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.
- (c) Garden and soaker hoses containing recovered plastic or rubber.
- (d) Lawn and garden edging containing recovered plastic or rubber.



(e) Plastic lumber landscaping timbers and posts containing recovered materials.

***Non-paper office products:***

(a) Office recycling containers and office waste receptacles.

(b) Plastic desktop accessories.

(c) Toner cartridges.

(d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.

(e) Plastic trash bags.

(f) Printer ribbons.

(g) Plastic envelopes.

(h) Plastic clipboards containing recovered plastic.

(i) Plastic file folders containing recovered plastic.

(j) Plastic clip portfolios containing recovered plastic.

(k) Plastic presentation folders containing recovered plastic.

(l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

**17. Geographic Preference**

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

**18. Termination or Cancellation of Contract**

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest (convenience) of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for supplies, materials or equipment ordered before the effective date of termination.

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, in accordance with the manner of performance set forth in the contract.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Owner may complete the work by issuing another contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Owner.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.

**19. Breach of Contract**

If the Contractor fails to make delivery of the equipment, supplies, or services within the specified terms of the contract, or fails to perform within the provisions of the contract, the contract may be terminated by reason of default or breach. A written notice of default or breach of contract shall be presented to the Contractor within three (3) working days of such failure. The Contractor will only be paid the contract price for equipment, supplies, or services delivered and accepted in accordance with the requirements set forth in the contract.

If it is determined that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Owner, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

The Owner in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case, the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the Owner's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the Owner setting forth the nature of said breach or default, the Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

## 20. **Resolution of Disputes**

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Owner. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the Owner. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the Owner shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Owner, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or

Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **21. Protest Procedures**

To ensure that protests are received and processed effectively the Purchaser shall provide written bid protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDOT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Purchaser before pursuing remedies through the NCDOT. Reviews of protests by the NCDOT will be limited to the Purchaser's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDOT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

## **22. No Federal Government Obligations to Third Parties**

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

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

## **23. False or Fraudulent Statements or Claims**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with this Project. Accordingly, upon execution of the underlying contract or agreement the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement involving a project authorized under 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

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

## **24. Access to Records and Reports**

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39 (i)(11).

**25. National Intelligent Transportation Systems Architecture and Standards**

To the extent applicable, the Owner agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

*(applicable to ITS projects)*

**26. State and Local Disclaimer**

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

**27. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**28. Hold Harmless**

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Purchaser/Owner of this Purchase Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses 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 or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Purchaser or its agents who are involved in the delivery or processing of contractor goods to the Purchaser. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

**29. Seat Belt Usage**

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt on the job seat belt use policies and programs for its employees when operating company owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts entered into under this project.

**30. Exclusionary or Discriminatory Specifications**

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h) by refraining from using any funds derived from FTA in performance of this Contract to support procurements using exclusionary or discriminatory specifications.

**31. Metric System**

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

**32. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment**

(a) Definitions. As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the

Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing 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 as part of any system. The Contractor is prohibited from providing to the Government 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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses 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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) 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.

(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 Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(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) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

## ATTACHMENT B

### CERTIFICATION REGARDING LOBBYING (To be submitted with all bids exceeding \$250,000.)

The undersigned \_\_\_\_\_ certifies, to the best of his or her knowledge and belief, that:  
(Vendor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (PL 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
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 is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). 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 \$250,000 for each such failure.

*[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or 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. Section A 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of Contractor's Authorized Official

\_\_\_\_\_

Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, in the State of \_\_\_\_;

and the County of \_\_\_\_\_.

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

My Appointment Expires \_\_\_\_\_



**ATTACHMENT C**  
**CERTIFICATE OF COMPLIANCE**

**WITH BUY AMERICA REQUIREMENTS**

***(To be submitted with all bids exceeding \$250,000. A bid, which does not include this certification or the certification under Attachment C, will not be eligible for award.)***

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

My Appointment Expires \_\_\_\_\_

**ATTACHMENT H**

**CERTIFICATE OF NON-COMPLIANCE**

**WITH BUY AMERICA REQUIREMENTS**

***(To be submitted with all bids exceeding \$250,000. A bid, which does not include this certification or the certification under Attachment H, will not be eligible for award.)***

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulation in 49 CFR Part 661.7.

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

My Appointment Expires \_\_\_\_\_

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

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

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

COMPANY \_\_\_\_\_

DATE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

My Appointment Expires \_\_\_\_\_

## ATTACHMENT J

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES

*(To be submitted with all bids)*

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

1. I am the \_\_\_\_\_ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3. ☐ Employer employs 25 or more employees, and is in compliance with the provisions of N.C. General Statute §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.  
☐ Employer employs fewer than 25 employees and is therefore not subject to the provisions of N.C. General Statute §64-26.
4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. General Statute §64-26.
5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Printed Name and Title

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

My Appointment Expires \_\_\_\_\_