



# NEW HANOVER COUNTY SCHOOLS

**RFP:** 218-13-26

**TITLE:** Board Certified Behavior Analyst (BCBA),  
Registered Behavior Technician (RBT)

**USING AGENCY:** SPECIAL EDUCATION AND RELATED SERVICES

**ISSUE DATE:** November 17, 2025

**ISSUING AGENCY:** New Hanover County Schools  
Brad Lackey  
Purchasing Officer  
2814 Carolina Beach Road  
Wilmington North Carolina 28412

Sealed Proposals subject to the conditions made a part hereof will be received until 2:00 p.m., December 8, 2025 for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS SHOWN ABOVE. COST PROPOSALS SHALL BE SUBMITTED IN A SEPARATE SEALED ENVELOPE. SUBMIT TWO SEALED ENVELOPES. ONE ENVELOPE CONTAINING TECHNICAL REQUIREMENTS AND ONE SEALED ENVELOPE CONTAINING COST PROPOSALS.

**IMPORTANT NOTE:** Indicate firm name, "Technical Proposal" or "Cost Proposal", and RFP number on the front of each sealed proposal envelope or package. Submit (5) copies and (1) original of the Technical Proposal and (1) original Cost Proposal. Technical Proposals and Cost Proposals must be submitted in separate envelopes.

Direct all inquiries concerning this RFP to:

New Hanover County Schools  
Brad Lackey  
Purchasing Officer  
2814 Carolina Beach Road  
Wilmington North Carolina 28412

All questions shall be submitted in writing and e-mailed to [brad.lackey@nhcs.net](mailto:brad.lackey@nhcs.net). Questions will be received until 1:00 p.m., November 24, 2025.

## INTRODUCTION

New Hanover County Schools is soliciting proposals from firms to provide special education and related services to students with disabilities in New Hanover County Schools during the 2025-2026 school year (July 1, 2025 through June 30, 2026), with an option to renew an additional two years in one year increments.

New Hanover County Schools intends to award contracts to entities utilizing a qualification based selection process. The request is for Behavioral Technical Assistance Services designed to provide direct intervention to students representing a range of disability categories, with an emphasis on Autism Spectrum Disorder, as well as consultation and training for school personnel.

## BACKGROUND

As of April 1, 2025, New Hanover County Schools provides special education and related services to approximately 3,600 students with disabilities. Contract services for 2025-2026 are projected as follows: (the projected hours are provided as a guide and are not guaranteed for any contract awarded as a result of this solicitation.)

1,150 hours of services from a Board Certified Behavior Analyst (BCBA), Registered Behavior Technician (RBT), or individual with experience implementing principles of Applied Behavior Analysis (ABA).

### **Behavior Technical Assistance Services**

There are 45 public (three pre-kindergarten, twenty-four elementary, seven traditional middle, four traditional high, three early colleges, two alternatives and two specialty) schools in New Hanover County serving students ages 3 through 22 years old. During 2025-2026, New Hanover County will continue its approach of a unified system of services by providing as many services as possible at each of our district schools.

These factors greatly impact the role of service providers in educational settings. Services to students with disabilities are delivered in a greater variety of settings, in collaboration with a variety of personnel and in support of the educational future of the student. Assisting practitioners in the educational setting to attain these outcomes requires beliefs, roles and practices which differ from other settings (e.g. clinics, homes). Participation in professional development activities, strong communication practices and strong partnerships are essential to delivery of services in an educational setting.

## SCOPE OF WORK

Firms may offer proposals for Behavior Technical Assistance Services to provide direct interventions and consultation to staff, in a school setting, with students ages 3 through 22 years old. Services will be provided to individual children or young adults, in smoke-free educational settings, during school employee hours, on school calendar dates, and in accordance with Individualized Education Programs (IEP) for each student and/or federal, state or New Hanover County Schools regulations and procedures.

## **Behavior Technical Assistance Services**

### **ESSENTIAL DUTIES AND RESPONSIBILITIES**

- Implement individualized Behavior Intervention Plans (BIPs).
- Collect and record behavioral and academic data to monitor student progress and guide intervention adjustments.
- Provide direct behavioral support to students in classroom, small group, or one-on-one settings.
- Use positive behavior supports and de-escalation techniques to prevent or reduce behavioral incidents.
- Support teachers and staff in applying consistent behavior management strategies.
- Assist in developing and maintaining visual supports, reinforcement systems, and structured routines.
- Participate in team meetings, IEP meetings, and problem-solving sessions as requested.
- Model appropriate social, communication, and coping skills for students.
- Maintain confidentiality of student information in accordance with district and federal guidelines (FERPA, IDEA).
- Maintain accurate documentation of interventions, incidents, and daily behavior logs.
- Support the creation of a safe, respectful, and inclusive environment for all students.

### **EDUCATION, TRAINING, AND EXPERIENCE**

- High school diploma or equivalent required; Associate's or Bachelor's degree in special education, psychology, education, or related field preferred.
- Experience working with children or students with behavioral, developmental, or emotional needs preferred.
- Board Certified Behavior Analyst (BCBA), Registered Behavior Technician (RBT), or experience implementing principles of Applied Behavior Analysis (ABA) preferred.

### **CERTIFICATION AND LICENSE REQUIREMENTS**

*One or more of the following:*

- Possess a current certification as a Registered Behavior Technician (RBT) through the Behavior Analyst Certification Board (BACB)
- Possess a current certification as a Board Certified Behavior Analyst (BCBA) through the Behavior Analyst Certification Board (BACB)
- Hold, or be qualified to hold, a North Carolina Professional Educator's License

### **PREFERRED QUALIFICATIONS**

- Special Education Certification or previous experience working with children or students with behavioral, developmental, or emotional needs.

### **ESSENTIAL FUNCTIONS AND RESPONSIBILITIES**

- Assesses individual needs of each student.
- Understanding of principles of Applied Behavior Analysis (ABA) or willingness to be trained.
- Aids in design and implementation of an IEP for each student served.
- Ability to remain calm and professional during behavioral crises.

- Strong communication and collaboration skills, both orally and in writing
- Performs other related duties as assigned.
- Physical ability (able to exert up to 20 pounds of force occasionally) and dexterity to perform the duties and responsibilities of the job.
- Ability to constantly monitor the safety and well-being of students.
- Comply with confidentiality requirements in local, state, and federal policies and statutes.
- Basic data collection and documentation skills.
- Commitment to equity, inclusion, and positive behavior support approaches.

## THE PROCUREMENT PROCESS

The following is a general description of the process by which a firm will be selected to provide services.

1. Request for Proposals (RFP) is issued to prospective contractors.
2. Technical Requirement proposals in **one original** and **five copies** will be received from each firm in one sealed envelope. Each original shall be signed and dated by an official authorized to bind the firm. Cost proposals, original copy, shall be submitted in a separate sealed envelope. Unsigned proposals will not be considered. **NOTE:** No technical information shall be contained in the cost proposal. No cost information shall be contained in the technical proposal. If any cost information is included in the technical proposal and/or if any technical information is included in the cost proposal, the firm's entire proposal shall be rejected.
3. All proposals are subject to the requirements outlined in the RFP and the terms and conditions included in Appendix A (New Hanover County Board of Education Contract for Services). All responses shall be controlled by the terms and conditions in Appendix A. Responses are subject to rejection if submitted with terms and conditions that differ from those contained in the New Hanover County Board of Education Contract for Services. The New Hanover County Board of Education Contract for Services will be executed between New Hanover County Schools and the selected vendor(s) once the contract(s) is awarded.
3. All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.
4. Upon completion of the technical evaluation, the cost proposals of those firms whose technical proposals have been deemed acceptable will be evaluated.
5. At their option, the evaluators may request oral presentations or discussion with any or all firms for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, firms are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the firm.
6. Proposals will be evaluated according to completeness, content, and experience with similar projects, ability of the firm and its staff, and cost. Each submission will be evaluated by a multi-representative reader panel according to the technical criteria set forth below: New Hanover County Schools will make an award based on the proposal(s) determined to constitute its best interest and also recognizes the solicitation may result in an award(s) other than the lowest price or highest technically qualified offer. New Hanover County Schools reserves the right to make an award to a single qualified vendor or as many qualified vendors as necessary to fulfill the needed services.

<u>TECHNICAL CRITERIA</u>	<u>POINTS (100 TOTAL)</u>
SCOPE OF SERVICES	30
SERVICES APPROACH	15
QUALITY OF PERSONNEL	20
BACKGROUND, EXPERIENCE AND CAPACITY	20
REFERENCES	10
ADDITIONAL CAPABILITIES	5

7. Firms are cautioned that this is a request for offers, not a request to contract, and New Hanover County Schools reserves the right to reject any and all offers when such rejection is deemed to be in the best interest of the Schools.

8. Firms responding to this request for proposal should respond in accordance with the following format, in the order identified. The proposal should be concise and succinct and not include unnecessary material. Additional material may be submitted but will not be considered in evaluating the specific elements of the proposal.

8.1 Firm Overview

- a. The proposal should include firm name, firm address, firm telephone number, firm fax number, firm email address, principal firm contact person, type of service typically performed by the firm, personnel resources available by discipline, insurance information and incorporation information.

8.2 Scope of Work (described on page 2 and 3)

- a. Specify procedures for assessing student(s) at the beginning and ending of service delivery.
- b. Specify the process for collecting and maintaining documentation pertinent to school-specific services.

8.3 Services Approach

- a. The proposal should describe the firm's approach to the services offered and the relationship of these services to the information specified under Introduction, Background, and Scope of Work, page 2 and 3.
- b. Provide a description of staff supervision, speaking to school-specific services.

8.4 Quality of Personnel

- a. List all key personnel the firm will commit to these services. Identify all credentials that qualify each individual to provide the services offered.
- b. Resumes will be requested upon award of contract.

8.5 Background, Experience and Capacity

- a. Describe the firm's background and experience in providing the services offered to students aged 3 through 22 years old.
- b. Describe the firm's capacity to provide the services including administrative support to manage the service including bookkeeping, accounting, clerical supports and electronic documentation capacity.
- c. Describe methods for providing staff orientation, staff substitutes when primary staff are unavailable, and methods for maintaining consistency of staff.

8.6 References

- a. List at least three (3) references with full name, addresses and phone numbers of past clients for whom similar services have been provided.

8.7 Additional Capabilities

- a. Describe the firm's unique capabilities to provide special education and related services to students with disabilities within a unified, transdisciplinary setting.

9. DEFINITIONS

**Direct services** means group or individual services provided directly to students intended to improve student performance.

**Consultative services** means services provided to the educational team including but not limited to school staff and the parent regarding support of the Special Education services and intended to improve student performance.

# COST PROPOSAL

**COST PROPOSAL**

1. Cost Proposals must be submitted in a separate sealed envelope. Indicate the Proposal Number, Cost Proposal, and Name of Firm on the envelope.
2. Cost proposal should provide cost per hour for each service area, to include, but not limited to, tasks within each service area, collaborative practices, and staff development support.
3. By submitting this proposal, the potential contractor certifies the following.
  - a. This proposal is signed by an authorized representative of the firm.
  - b. It can obtain insurance certificates as required within 10 calendar days after notice of award.
  - c. The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.
  - d. All labor costs, direct and indirect, have been determined and included in the proposed cost.
  - e. The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within forty-five (45) days from the date of the opening, to furnish the subject services as indicated:

	FY 2025-2026	FY 2026-2027	FY 2027-2028	
	\$ _____	\$ _____	\$ _____	PER HOUR

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FEDERAL EMPLOYER IDENTIFICATION NUMBER: \_\_\_\_\_

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_  
(Signature)

\_\_\_\_\_ DATE: \_\_\_\_\_  
(Typed or Print Name)

\*\*\*\*\*

**THIS PAGE MUST BE SIGNED AND SUBMITTED IN A SEPARATE SEALED ENVELOPE. DO NOT INCLUDE THIS FORM OF PROPOSAL WITH THE TECHNICAL REQUIREMENT PROPOSAL.**

Unsigned proposals will not be considered.

## **INSTRUCTIONS TO FIRMS**

1. **READ, REVIEW AND COMPLY:** It shall be the Firm's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Firms or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Firm's sole responsibility to ensure delivery at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** New Hanover County Schools reserves the right to reject any and all proposals, to waive any informality in proposals and to accept any item in the proposal. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
4. **EXECUTION:** Failure to sign the Cost Proposal in the indicated space will render proposal non-responsive, and it shall be rejected.
5. **INFORMATION AND DESCRIPTIVE LITERATURE:** Firm shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this proposal, each Firm must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Proposals that do not comply with these requirements shall be subject to rejection.
6. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute §143-48 and Executive Order #150 (1999), New Hanover County Schools invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
7. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, New Hanover County Schools will maintain confidential trade secrets that the Firm does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Firm, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Firm may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. §132-1.2. Any material labeled as confidential constitutes a representation by the Firm that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. §132-1.2. Firms are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.
8. **PROTEST PROCEDURES:** When a Firm wishes to protest a Contract resulting from this solicitation with an awarded amount of at least \$25,000, a Firm shall submit a written request addressed to the Purchasing Director 2814 Carolina Beach Road, Wilmington, North Carolina 28412. The protest request must be received in the proper office within thirty (30) consecutive calendar days from the date of the Contract award. Protest letters **shall** contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims. **Note:** Contract award notices are sent only to the Firm actually awarded the

Contract, and not to every person or firm responding to a solicitation. Proposal status and Award notices can be obtained by calling (910) 254-4417.

9. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
10. **COMMUNICATIONS BY VENDORS:** In submitting its proposal, the Firm agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Firms shall not have any communication with the using or issuing agency, or any other representative of New Hanover County Schools concerning the solicitation, during the evaluation of the proposals (i.e., after receipt of the proposals and before the award of the Contract), unless New Hanover County Schools directly contacts the Firm(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Firm shall not: (a) transmit to New Hanover County Schools any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Firm's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation and/or award of the Contract that is the subject of this RFP. Firms not in compliance with this provision may be disqualified, at the option of New Hanover County Schools, from the Contract award. Only those communications with New Hanover County Schools are authorized by this RFP are permitted.
11. **WITHDRAWAL OF PROPOSAL:** A Proposal may be withdrawn only in writing and actually received by New Hanover County Schools prior to the date and time proposals are due. A withdrawal request must be on Firm's letterhead and signed by an official of the Firm authorized to make such request. Any withdrawal request made after the date and time proposals are due shall be allowed only for good cause shown and in the sole discretion of New Hanover County Schools.
12. **INFORMAL COMMENTS:** New Hanover County Schools shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of New Hanover County Schools during the competitive process or after award. New Hanover County Schools is bound only by information provided in this RFP and in formal Addenda issued.
13. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Firm in preparing or submitting offers are the Firm's sole responsibility; New Hanover County Schools will not reimburse any Firm for any costs incurred prior to award.
14. **FIRM'S REPRESENTATIVE:** Each Firm shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
15. **SUBCONTRACTING:** Unless expressly prohibited, a Firm may propose to subcontract portions of the work to identified subcontractor(s), provided that its proposal clearly describe what work it plans to subcontract and that Firm includes in its proposal all information regarding employees, business experience, etc. for each proposed subcontractor that is required to be provided for Firm itself.
16. **INSPECTION AT FIRM'S SITE:** New Hanover County Schools reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective Firm prior to Contract award, and during the Contract term as necessary for New Hanover County School's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
17. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries or correspondence relating to or in reference to this RFP, and all other reports, charts, displays, schedules, exhibits and other

documentation submitted by the Firm shall become the property of New Hanover County Schools when received.

**New Hanover County Schools**  
**Required Federal Contract Clauses**  
**May 2<sup>nd</sup>, 2019**

Requirements under the Uniform Rules. The following provisions apply to the contract between the parties and are intended to comply with the requirements for contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. §200.326 and 2 C.F.R. Part 200, Appendix II, including FEMA Public Assistance Grants and cooperative agreements. The New Hanover County Board of Education a/k/a the New Hanover County Schools is sometimes referred to herein as NHCS or the non-Federal entity. The party contracting with the NHCS is referred to herein as the Contractor, bidder or proposer.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$250,000) must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Terms: The parties agree that NHCS reserves all rights and privileges under applicable laws and regulations with respect to this contract in the event of a breach of contract, including but not limited to the right to institute legal proceedings in a Court of competent jurisdiction seeking monetary damages, court costs and litigation expenses, as applicable.

2. Termination for Cause and Convenience.

- a. Standard: All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Terms: The parties agree that NHCS reserves the right to terminate the contract immediately, with written notice to the Contractor, in the event of a breach or default of the Contractor, including but not limited to situations in which the Contractor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. NHCS also reserves the right to terminate the contract immediately, with written notice to the Contractor, for convenience, if NHCS believes, in its sole discretion, that it is in the best interest of NHCS to do so. In the event of a termination for convenience of NHCS, the Contractor will be compensated only for work properly

performed and accepted and goods accepted by NHCS as of the termination date. The amount of compensation due the Contractor in the event of a termination for the convenience of the NHCS shall be a reasonable amount, using as a guide factors such as the percentage of work or services properly performed by the Contractor and accepted by the NHCS as of the date of termination, the contract price and any unit prices specified in the contract, as applicable. In the event of a termination for convenience of NHCS, the Contractor shall not be entitled to any special, consequential or exemplary damages, lost profits, mobilization or de- mobilization expenses, overhead or any other damages or costs. Any award under this procurement process is not exclusive and NHCS reserves the right to purchase goods and services from other vendors when it is in the best interest of NHCS.

3. Equal Employment Opportunity.

a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p.339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.

b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision,

inspection, and other onsite functions incidental to the actual construction.

- c. Terms: Pursuant to 41 C.F.R. Part 60-1.4(b) the parties agree to the following contract clauses:

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be

declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph

(1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.”

#### 4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- b. Standard: All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti -Kickback Act.” However, for purposes of grant programs where both clauses do apply, FEMA requires the contract clause set forth below:

- c. Terms: In contracts were applicable, the parties agree to comply with the provisions of the Davis-Bacon Act and its implementing regulations and the following contract clauses:

Compliance with the Copeland “Anti -Kickback” Act.

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

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

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

5. Contract Work Hours and Safety Standards Act.

- a. Standard: Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non- Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.

Under 40 U.S.C. § 3702, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- b. Terms: Pursuant to the regulation at 29 C.F.R. § 5.5(b), the parties agree to the following contract clauses where applicable:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime and safety requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. In addition, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These safety requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth immediately above, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to

such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) immediately above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) immediately above.

(3) Withholding for unpaid wages and liquidated damages. The North Carolina Department of Public Instruction shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) immediately above.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this subsection and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this subsection.

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Applicability: Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. Standard: If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See

The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

- c. Terms: The parties agree to comply with the requirements of 37 CFR Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F, as applicable.

7. Clean Air Act and the Federal Water Pollution Control Act.

- a. Standard: Contracts of amounts in excess of \$150,000 must contain a provision that requires the Contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
- b. Terms: The parties agree to the following contract clauses for contracts of amounts in excess of \$150,000:

Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the North Carolina Department of Public Instruction and understands and agrees that the North Carolina Department of Public Instruction will, in turn, report each violation as required to assure notification to the New Hanover County Schools, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided

by FEMA.

Federal Water Pollution Control Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Contractor agrees to report each violation to the North Carolina Department of Public Instruction and understands and agrees that the North Carolina Department of Public Instruction will, in turn, report each violation as required to assure notification to the New Hanover County Schools, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

c. Terms: The parties agree to the following contract clauses:

8. Suspension and Debarment.

- a. Applicability. This requirement applies to all FEMA grant and cooperative and agreement programs.
- b. Standard. Non-federal entities and Contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. Terms: The parties agree to the following contract clauses:
  - (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
  - (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- (3) This certification is a material representation of fact relied upon by NHCS. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the NC Department of Public Safety and the NHCS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Standard: Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.

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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

Terms: The parties agree to the following contract clauses:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are

forwarded from tier to tier up to the recipient.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

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

*(To be submitted with each bid or offer exceeding \$100,000)*

*The undersigned [Contractor] certifies, to the best of his or her knowledge, that:*

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.*
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

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

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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 \$100,000 for each such failure.*

*The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.*

*Signature of Contractor's Authorized Official*

*Name and Title of Contractor's Authorized Official*

*Date*

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

- b. Standard: A non-Federal entity that is a state agency or agency of a political subdivision of a state and its Contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.

The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- c. Terms: The parties agree to the following contract clauses:

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

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

- (2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

## 11. Additional FEMA Requirements (as applicable).

- a. Standard: To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured. Thus, the parties agree that the method of any work, the schedule of any work, the price for any work or materials or any other provision of this contract may be

changed only by mutual written agreement of the parties.

Access to Records. All non-Federal entities must place into their contracts a provision that all Contractors and their successors, transferees, assignees, and subcontractor acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

b. Terms: Thus, the parties agree to the following contract clauses, as applicable:

- (1) The Contractor agrees to provide New Hanover County Schools, NC Department of Public Safety, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

## 12. DHS Seal, Logo, and Flags (as applicable)

- a. Standard: All non-Federal entities must place in their contracts a provision that a Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. Terms: The parties agree as follows, as applicable: The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

## 13. Compliance with Federal Law, Regulations, and Executive Orders (as applicable).

- a. Standard: All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the Contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

- b. Terms: The parties agree as follows, as applicable: This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

14. No Obligation by Federal Government.

- a. Standard: The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
- b. Terms: The parties agree as follows: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. Standard: The non-Federal entity must include a provision in its contract that the Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. Terms: The parties agree as follows: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.