



Mecklenburg County, North Carolina
Procurement Division
Solicitation Terms & Conditions

1. Accuracy of Solicitation and Related Documents.

The County assumes no responsibility for conclusions or interpretations derived from the information presented in this Solicitation, or otherwise distributed or made available during this procurement process. In addition, the County will not be bound by or be responsible for any explanation, interpretation or conclusions of this Solicitation or any documents provided by the County other than those provided by the County through the issuance of addenda. In no event may a vendor rely on any oral statement by the County or its agents, advisors or consultants.

Should a vendor find discrepancies or omissions in this Solicitation or any other documents provided by the County, the vendor should immediately notify the County of such potential discrepancy in writing, and a written addendum may be issued if the County determines clarification necessary. Each vendor requesting an interpretation will be responsible for delivering such requests to the County's designated representative.

2. Interpretations and Addenda.

No interpretation or clarification of the meaning of any part of this Solicitation will be made orally to any vendor. Vendors must request such interpretations or clarifications in writing from the County via www.meckprocure.com.

The Procurement Division reserves the right, based on availability of time to research and communicate an answer, to decide whether an answer can be provided. Responses to vendor questions and any addenda will be posted to this Solicitation at www.meckprocure.com.

The County reserves the right to disqualify any vendor who contacts a County official, employee, or agent concerning this Solicitation other than in accordance with this section. Nothing in this section shall prohibit the County from conducting discussions with vendors after the Solicitation due date.

3. County's Rights and Options.

At the County's sole discretion, the County reserves the right to:

- Supplement, amend, substitute or otherwise modify this Solicitation at any time;
- Cancel this Solicitation with or without the substitution of another Solicitation;
- Take any action affecting this Solicitation, this Solicitation process, or the services or facilities subject to this Solicitation that would be in the best interests of the County;

- Issue additional requests for information;
- Require one or more vendors to supplement, clarify or provide additional information in order for the County to evaluate the proposals submitted;
- Conduct investigations with respect to the qualifications and experience of each vendor;
- Waive any defect or irregularity in any bid/proposal received;
- Reject any or all bids/proposals;
- Share the bids/proposals with County employees other than the evaluation committee or County advisory committees as deemed necessary;
- Award all, none, or any part of the services that is in the best interest of the County, with one or more of the vendors responding, which may be done with or without re-Solicitation.
- At the discretion of the County, discuss and negotiate with selected vendor(s) any terms and conditions in the proposals including but not limited to financial terms; and
- Enter into any contract deemed by the County to be in the best interest of the County, with one or more of the vendors responding.

4. **Expense of Submittal Preparation.**

The County accepts no liability for the costs and expenses incurred by the vendor's in responding to this Solicitation. Each vendor that enters the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that the vendor cannot make any claims whatsoever for reimbursement from the County for the costs and expenses associated with this process.

5. **Proposal Conditions.**

By choosing to submit a response to this Solicitation, the vendor acknowledges acceptance of the following terms and conditions. Vendors are encouraged to carefully review and understand each of these Solicitation conditions and consult with their legal counsel if appropriate.

6. **Vendor Financial Information.**

At the County's sole discretion, financial information may be requested as part of the evaluation process. Any financial information requested must be provided to the County within twenty-four (24) hours. Examples of financial information that may be requested include, but are not limited to:

- Credit ratings and credit reports;
- Bank and vendor references;
- Audited financial statements; and
- Statement of Guarantor(s).

7. **Solicitation Not an Offer.**

This Solicitation does not constitute an offer by the County. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the County unless the County and the vendor execute a Contract. No recommendations or conclusions from this Solicitation process concerning the vendor shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

8. **Right to Terminate Discussions.**

The vendor's participation in this process might result in the County selecting the vendor to engage in further discussions. The commencement of such discussions, however, does not signify a commitment by the County to execute a contract or to continue discussions. The County can terminate discussions at any time and for any reason.

9. **Representation as to Accuracy and Completeness of Proposal.**

Each vendor shall make the following representations and warranty in its proposal cover letter, the falsity of which might result in rejection of its Bid/Proposal: **“The information contained in this bid/proposal or any part thereof, including its exhibits, schedules, and other documents and instruments delivered or to be delivered to the County, is true, accurate, and complete. This bid/proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the County as to any material facts.”**

10. **E-Procurement System Registration.**

The County utilizes a Procurement Software System to interact with vendors. To compete for and be awarded County contracts, vendors must be registered in the MECKProcure system. Registration is required to submit a response to this Solicitation. To register as a vendor, please visit www.meckprocure.com.

11. **County Terms and Conditions.**

Vendors accept the condition that the County's terms and conditions will be used as the basis for any contract awarded from this Solicitation. A copy of the County's terms and conditions is available at

<http://charmeck.org/mecklenburg/county/Finance/Procurement/Documents/Sample-Contract.pdf>

12. **Trade Secrets/Confidentiality.**

Public disclosure of the contents of each vendor's proposal submitted in response to this Solicitation is governed by North Carolina General Statutes Chapters 132 and 66-152 et. seq. After the due date, all proposals shall be deemed a public record and made available to the County's evaluation committee and the general public (upon request) unless the material qualifies as “trade secret” information under North Carolina law.

To designate material as trade secret you must: (a) submit any trade secrets in a separate, sealed envelope and electronic file, clearly marked **“Trade Secret—Confidential and Proprietary Information—Do Not Disclose Except for the Purpose of Evaluating**

this Proposal,” and (b) include the same trade secret designation on each page of the trade secret materials contained in the envelope and on each page of the electronic file.

In submitting a proposal, each vendor agrees that the County may reveal any trade secret materials contained in such response to all County staff and County officials involved in the selection process, and to any outside consultant or other third parties who serve on the evaluation committee or who are hired or appointed by the County to assist in the evaluation process.

Furthermore, each vendor agrees to indemnify and hold harmless the County and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material, which the vendor has designated as a trade secret. **Any vendor that designates its entire proposal as a trade secret may be disqualified.**

13. Prohibited Discrimination.

The County is committed to promoting equal opportunities for all and to eliminating prohibited discrimination in all forms. For purposes of this section, prohibited discrimination means discrimination in the Solicitation, selection, and/or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability or other unlawful form of discrimination. Without limiting the foregoing, prohibited discrimination also includes retaliating against any person, business or other entity for reporting any incident of prohibited discrimination. It is understood and agreed that not only is prohibited discrimination improper for legal and moral reasons, prohibited discrimination is also an anti-competitive practice that tends to increase the cost of goods and services to the County and others. As a condition of entering into any contract, the vendor shall represent, warrant and agree that it does not and will not engage in or condone prohibited discrimination. Without limiting any rights, the County may have at law or under any other provision of any contract, it is understood and agreed that a violation of this provision constitutes grounds for the County to terminate any such contract.

14. Commercial Nondiscrimination.

In preparing the Bid/Proposal, the vendor has considered all proposals submitted from qualified, potential subcontractors and suppliers and have not engaged in or condoned prohibited discrimination. For purposes of this section, *prohibited discrimination* means discrimination against any person, business or other entity in contracting or purchasing practices on the basis of race, color, sex, or national origin. Without limiting the foregoing, *prohibited discrimination* also includes retaliating against any person, business or other entity for reporting any incident of prohibited discrimination. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the County to reject the bid submitted by the bidder on this project and to terminate any contract awarded based on such bid. As a condition of contracting with the County, the vendor agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The vendor further agrees

to promptly provide to the County all information and documentation that may be requested by the County from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the County to reject the bid submitted by the vendor or terminate any contract awarded on such bid.

15. Statutory Requirements.

Any contract awarded as a result of this Solicitation shall be in full conformance with all statutory requirements of North Carolina and all statutory requirements of the Federal Government, to the extent applicable.

16. Contract Award by Governing Board.

The County, at its sole discretion, may submit the award recommendation to its governing board for permission to negotiate and execute a contract with the vendor. Under this circumstance, the Procurement Division will provide contract documents to the vendor upon approval by the governing board. In the event the governing body approval is not received within one hundred eighty (180) calendar days after opening of the proposals, the vendor may request that it be released from their proposal.

17. Reservation of Right to Change Schedule.

The County shall ultimately determine the timing and sequence of events resulting from this Solicitation. The County reserves the right to delay the closing date and time for any phase if County staff believe that an extension will be in the best interest of the County.

18. Reservation of Right to Amend Solicitation.

The County reserves the right to amend this Solicitation at any time during the process, if it believes that doing so is in the best interests of the County. Vendors are required to acknowledge their receipt of each addendum with their submission by completing the Addenda Acknowledgement Form.

19. Additional Evidence of Ability.

Vendors shall be prepared to present additional evidence of experience, qualifications, abilities, equipment, facilities, and financial standing. The County reserves the right to request such information at any time during the proposal evaluation period for this Solicitation.

20. No Collusion or Conflict of Interest.

By responding to this Solicitation, the vendor shall be deemed to have represented and warranted that the proposal is not made in connection with any competing vendor submitting a separate response to this Solicitation, and is in all respects fair and without collusion or fraud.

21. Proposal Terms Firm and Irreversible.

The signed proposal shall be considered a firm offer on the part of the vendor. The County reserves the right to negotiate price and services. All proposal responses (including all statements, claims, declarations, prices and specifications in the proposals)

shall be considered firm and irrevocable for purposes of future contract negotiations unless specifically waived in writing by the County. The vendor chosen for award should be prepared to have its proposal and any relevant correspondence incorporated into the contract, either in part or in its entirety, at the County's election. Any false or misleading statements found in the proposal or contract exceptions not included in the proposal may be grounds for disqualification.

22. Proposal Binding for 180 Days.

Each Proposal shall contain a statement to the effect that the proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the vendor and include their name, title, address, and telephone number. All prices quoted shall be firm and fixed for the full contract period.

23. MWSBE Programs.

The MWSBE policy of Mecklenburg County affords maximum opportunity to compete for and participate in the performance of contracts issued on behalf of Mecklenburg County. The County further requires that its vendors agree to take all the necessary and responsible steps to ensure that minority and small business enterprises have the maximum opportunity to participate as subcontractors for County contracts.

24. Subcontracting.

The vendor given contract award shall be the prime contractor and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the vendor shall remain the prime contractor and will assume all responsibility for the performance of the services that are supplied by all subcontractors. The County retains the right to approve all subcontractors.

25. Brand Name.

If and whenever brand names, makes, names of manufacturers, trade names, vendor catalogs or model numbers are stated in this Solicitation, they are for the purpose of establishing a grade or quality of material. The County will evaluate alternates to specified brand names, unless the item(s) is marked "No Substitute," as provided in this Solicitation.

26. Equal Opportunity.

The County has an equal opportunity purchasing policy. The County seeks to ensure that all segments of the business community have access to supplying the goods and services needed by County programs. The County provides equal opportunity for all businesses and does not discriminate against any vendors regardless of race, color, religion, age, sex, and national origin or disability.

27. Use of County's Name.

No advertising, sales promotion or other materials of the vendor or its agents or representatives may identify or reference the County in any manner absent the prior written consent of the County.

28. Withdrawal for Modification of Bids/Proposals.

- **For an RFP or RFQ:** Vendors may change or withdraw their Bids/Proposals at any time prior to the due date at www.meckprocure.com. No oral modifications will be allowed.
- **For an ITB:** Vendors may change or withdraw their Bids/Proposals at any time prior to the due date and time. After the due date and time, vendors shall reference North Carolina General Statute 143-129.1 for the procedure to withdraw a Bid/Proposal.

29. No Bribery.

In submitting a response to this Solicitation, each vendor certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the County in connection with the contract.

30. Exceptions to the Solicitation.

Other than exceptions that are stated in compliance with this section, each proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this Solicitation. An “exception” is defined as the vendor’s inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the Solicitation. **All exceptions taken must be identified and explained in writing in your proposal and must specifically reference the relevant section(s) of this Solicitation.** If the vendor provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the vendor’s solution, must be described in detail.

31. Fair Trade Certifications.

By submission of a proposal, the vendor certifies that in connection with this procurement:

- The prices have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with anyone;
- Unless otherwise required by law, the prices which have been quoted in its proposal have not been knowingly disclosed by the vendor and will not knowingly be disclosed by the vendor prior to opening; and
- No attempt has been made or will be made by the vendor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

32. Clarification of Ambiguities.

Any vendor believing that there is any ambiguity, inconsistency or error in this Solicitation shall promptly notify the County in writing of such apparent discrepancy. Failure to notify will constitute a waiver of claim for ambiguity, inconsistency or error.

33. Vendor's Obligation to Fully Inform Themselves.

Vendors or their authorized representatives are expected to fully inform themselves as to all conditions, requirements and specifications of this Solicitation before submitting proposals. Failure to do so will be at the vendor's own risk.

34. Bribery Convictions.

Vendor affirms that none of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of North Carolina law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business.

35. Other Convictions.

Vendor affirms that none of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract or fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- Been convicted of any criminal violation of a state or federal antitrust statute;
- Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract.

36. Debarment.

Vendor affirms that none of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings,

the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

37. Collusion.

Vendor affirms that they have not:

- Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/Proposal that is being submitted;
- In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

38. Tax Payments.

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of North Carolina and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of North Carolina prior to final settlement.

39. Contingent Fees.

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

40. Iran Divestment Act Certification.

Pursuant to N.C.G.S. § 147-86.59, Contractor certifies that as of the date of this Agreement or purchase order, Contractor is not listed on the Final Divestment List as created by the State Treasurer, and is in compliance with the Iran Divestment Act as set forth in N.C.G.S. § 147-86.55-86.63. Further, the Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List. The Divestment List may be found on the State Treasurer's website at www.nctreasurer.com/Iran.

41. Disclaimer.

Each vendor must perform its own evaluation and due diligence verification of all information and data provided by the County. The County makes no representations or warranties regarding any information or data provided by the County.