

CALL FOR BIDS

Cape Hatteras Electric Cooperative (CHEC), hereby gives notice to prospective bidders that proposals will be received by **CHEC**, at the Finance and Administration, bids@chec.coop until **5:00 p.m. on April 23, 2019** for:

CHEC BID #19-4

SPECIFICATIONS FOR 2019 EMERGENCY BASE CAMP SERVICES

In order to insure an open and full competitive bidding process and maintain compliance with FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)*, CHEC has instituted the VendorLink system to provide current information to potential bidders. These systems will allow you to receive bid information quickly and at your convenience 24 hours a day, seven days a week. Specifications may be obtained from their website at www.myvendorlink.com. Registered vendors will be notified automatically of all Requests for Proposals.

All Bidders are required to:

Send Bid Proposals electronically to: bids@chec.coop

CHEC BID # 19-4 SPECIFICATIONS FOR 2019 EMERGENCY BASE CAMP SERVICES

***Cape Hatteras Electric Cooperative
CHEC Bid #19-4
Finance & Administration Department
PO Box 9
47109 Light Plant Road
Buxton, NC 27920***

It is the sole responsibility of each Bidder to deliver its Proposal to CHEC at the place designated for receiving Proposals and prior to the time for opening Proposals last announced to Bidders. Any Proposal received after the time last announced for opening Proposals may be retained by CHEC or returned to the Bidder, but such Proposal shall be rejected as not responsive.

NOTE: CHEC will entertain questions for clarification until **April 17, 2019 at 5:00pm**. All questions must be submitted in writing by email to bids@chec.coop. No questions will be answered after that date.

Each proposal should constitute an offer to **CHEC**, as outlined therein, and should be irrevocable after the time announced for the opening thereof.

CHEC reserves the right to reject any or all proposals, to waive irregularities and informalities in any or all proposals, and to separately accept or reject any item, items, bid schedule or bid schedules of the proposal which **CHEC** deems to be in the best interest of CHEC.

Chip Hammack
Manager of Finance & Administration

CHEC GENERAL INFORMATION

Cape Hatteras Electric Cooperative (CHEC) is the public power utility for Hatteras Island on the Outer Banks of North Carolina. The cooperative, located in the village of Buxton, North Carolina, serves approximately 7,800 meters along the island while maintaining 43 miles of transmission and 344 miles of distribution lines across the service territory. CHEC takes delivery of transmission power at the north side of the Bonner Bridge at the Oregon Inlet and maintains a 115 KV transmission line running south to Buxton, NC at the cooperative's office. At Buxton the transmission is stepped down to a 34.5 transmission line that runs to the southern end of the island in Hatteras, NC.

The Cooperative was formed as a corporation in the state of North Carolina and is recognized by the Internal Revenue Service as being a federal income tax exempt entity under section 101(10) of the Revenue Act of 1939 (now section 501 (c) (12) of the Internal Revenue Code). CHEC imports all of its power from the mainland but has access to a 15 MW diesel plant located next to the cooperative's office for emergency generation and peaking power.

CHEC and its representatives have exercised due care in preparing this Request for Proposal (RFP). All information contained herein is believed to be substantially correct; however, bidders should verify information independently if desired. CHEC and its representatives do not warranty the accuracy of information contained herein.

BID GENERAL INFORMATION

CHEC is accepting storm rates for 2019. The work to set up a base camp to support restoration workers in the event of a catastrophic storm.

SCOPE OF SERVICES:

CHEC requests Proposals for Base Camp Services provider for the following:

A base camp facility to sleep 100 persons and feed 100 persons. Locations will be provided by CHEC upon assessment of storm damage and could be divided into multiple locations in the event of an island breach. The deployment is to be for a minimum of seven (7) consecutive days, with options to extend by single day intervals.

Base Camp Requirements:

- Kitchen and Catering
- Refrigeration for food
- Dining facilities with A/C
- Sleep trailers (30+ beds each) with A/C
- Showers and toilets
- Laundry services
- Ice
- On-site medical aid
- Site security
- Water, generators, and waste removal (fuel and propane provided by CHEC)
- After hours truck and equipment fueling services (fuel to be provided by CHEC)

Submittal Requirements

Proposals must be submitted in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all requirements stated below. Any other information thought

to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal.

Required Information

- 1. Title Page.** Show the name of Contractor's firm, address, telephone number, name of contact person, date and the subject: Request for Proposals for Base Camp Services for Cape Hatteras Electric Cooperative.
- 2. Table of Contents.** Include a clear identification of the material by selection and by page number.
- 3. Cover Letter and Executive Summary.** This letter must be signed by an individual who is authorized to negotiate terms, render binding decisions and commit the Contractor's resources (e.g., the president or executive director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship). The letter must indicate the legal status of the Contractor (sole proprietorship, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
- 4. Firm Overview.** Provide a brief history and description of your firm's business organization and experience as it relates to the requirements discussed previously. Include the location of offices and the specific expertise and services that distinguish your firm.
- 5. Relevant Expertise and Experience.** Provide a narrative statement regarding your experience as it relates to the Scope of Services of the RFP. Additionally, include a statement regarding your understanding of the requirements as outlined in the RFP.
- 6. References.** The Contractor shall provide at least three references, within the past five years of clients for whom these requested services have been performed that are comparable in quality and scope to that specified in this RFP. The references shall include names, addresses, and telephone numbers of the clients for whom prior work was performed and include an explanation of the services provided.
- 7. Description of Approach.** Provide a comprehensive description of the Contractor's proposed approach. This section should convey the Contractor's understanding of the project.

- 8. Deliverables.** Fully describe all major equipment (kitchen, dining tent(s), sleep trailers, laundry trailers, showers, toilets, etc.). Include sample menus based on given bid price. (Attachment D).
- 9. Cost Proposal.** The following cost proposals are required and are to be based on the expectations that Base Camp resources will be deployed to Hatteras Island within 24 hours after a storm, and Base Camp resources will be capable of being operational within 72 hours after the storm or within 48 hours of the roads or ferry onto Hatteras Island being open, if road openings are delayed:
 - A. Provide a fully detailed cost proposal including staff costs and any expenses necessary to accomplish the tasks described in the Scope of Services above, including the cost to extend deployment(s) by single day intervals. **DO NOT** include Delivery and Pick-up charges. (Attachment A).
 - B. Provide a "Not to Exceed" Delivery and Pick-up charge. Also provide pricing variables that will be reflected in the actual billing (mileage costs, labor costs, meals, lodging, etc.). (Attachment B).
 - C. Provide a complete 2019 pricing sheet. Additional costs or savings associated with the changes from base camp size or amenities will be determined by the Contractor's 2019 price sheet. (Attachment C).
- 10. Personnel.** Provide the names, proposed roles, background and experience, and availability of the personnel that would perform requested services, and specifically identify the primary person(s) who will be responsible for managing the relationship with CHEC.

Addenda and Supplemental Information

Any and all addenda to the RFP will be provided to all Proposers who received the initial RFP and provided contact information to CHEC, should it become necessary for CHEC to make revisions, request additional information, or respond to written inquiries relating to the RFP. It is the responsibility of potential proposers to timely submit contact information to facilitate receipt of addenda and supplemental information requests, if issued.

Evaluation and Award Criteria:

A Selection Committee appointed by CHEC will evaluate and rank each Proposal.

Review of Proposal:

CHEC's designated selection committee will review responses to the RFP. Selections will be based on completeness of proposals and on which Firms demonstrate the best combination cost and experience.

Evaluation Criteria: The Selection Committee will evaluate and score proposals on the basis of the responsiveness to the requirements of this RFP. Proposals will be evaluated on the basis of the following criteria:

Selection Criteria:

The following weighted criteria will be utilized to select the Bidder to be awarded this contract in each event:

Qualifications of Contractor	20
Qualifications of Staff	20
Relevant Past Performance	20
Technical Approach	20
Cost Proposal	20
TOTAL	100

Anticipated Schedule (subject to change)

April 8, 2019	Call for Bids
April 15, 2019	Questions Due
April 23, 2019	Bids Due
April 24, 2019	Bid Openings
May 3, 2019	Bid Acceptance

ADDENDUM "A"

GENERAL TERMS AND CONDITIONS

1. CONTRACTOR agrees to perform or support work for CHEC as specifically required and authorized by CHEC. This agreement supersedes all prior contracts and understandings between CHEC and the CONTRACTOR.
2. It is the intention of the parties hereto that the CONTRACTOR herein shall be considered an independent CONTRACTOR. Nothing contained herein shall create a joint venture, partnership, or principal and agent relationship between CONTRACTOR and CHEC. Any personnel furnished by the CONTRACTOR shall be considered for all purposes employees of the CONTRACTOR. Under no circumstances shall such personnel be considered employees of CHEC or be entitled to any of the rights, benefits, or privileges of CHEC employees.
3. **Conduct.** The CONTRACTOR acknowledges that the CONTRACTOR'S principal agents, employees, and other representatives are not employees of CHEC; however, the CONTRACTOR, its employees, agents, and representatives agree to adhere and follow all policies which are applicable to CHEC employees. To the extent that the CONTRACTOR violates any of said policies which results in a third-party claim, or a claim by a CHEC employee as a result of the actions of the CONTRACTORS, its employees, agents, or representatives, then the CONTRACTOR shall indemnify and hold CHEC harmless from said claims. It is further deemed that any violation of said policies shall constitute a default and serves as grounds for immediate revocation and termination of this contract.
4. CONTRACTOR shall furnish all the supervision, labor, machinery, tools, materials, motor vehicles, and any other items, except as may be designated in the specific terms and description of services, with respect to the performed work.
5. CONTRACTOR agrees to obtain at its cost and expense any specified performance or payment bonds, and provide evidence of said bonds to CHEC within the time period specified. CONTRACTOR must be properly licensed to perform the work in the city, county, and state in which the work is to be performed. CONTRACTOR shall provide at its own expense all permits and licenses applicable to the work and shall furnish evidence of the same to CHEC.
6. CONTRACTOR acknowledges that time of performance is of the essence with regard to the work and all obligations under this agreement. The hours of work and the days upon which work shall be performed by the CONTRACTOR will be within the discretion of the CONTRACTOR but consistent with CHEC'S regular working day and office hours unless otherwise agreed or arrangements have been made providing access or the CONTRACTOR shall promptly perform all work assigned to it by CHEC and shall meet the performance completion date(s) specified by CHEC in the project schedule. Should Subcontractor fail to maintain and meet the required construction schedule, CONTRACTOR shall add to its workforce as may be necessary to adhere to the required schedule at no cost to CHEC.
7. CHEC, without notice to any surety, may make changes including the omission of portions of the work and may order performance of other work by a written change order. Adjustments of the price or time in which the work is to be completed will be specifically addressed in a change order.
8. Work shall be performed in accordance with the established electric membership cooperative industry standards and/or any other applicable standards or specifications governing CHEC'S operations.
9. CONTRACTOR will utilize competent people, proper tools, equipment, and materials in performing the work. At the request of CHEC, the CONTRACTOR shall remove from any work site any of its employees, subcontractors, or other personnel that CHEC deems unsuitable. The CONTRACTOR shall require all of its employees or other personnel to comply with all rules and regulations governing the performance of its work on the premises and/or in the building where work is to be performed and to consent to, cooperate in, and pass any background checks and drug checks as may be required by CHEC.

10. CONTRACTOR agrees to store all its equipment, materials, and tools in designated areas and shall be responsible for the safety and risks associated therewith.
11. CONTRACTOR represents that all work performed will strictly comply with all Federal, State, Local, Municipal, as well as any other governing jurisdictions and authorities' laws, rules, regulations, statutes, ordinances, and directives and the appropriate orders and regulations of the Department of Labor. CONTRACTOR will comply with all provisions of the Federal Equal Employment Opportunity Act and Affirmative Action programs.
12. CONTRACTOR shall remove all waste and debris from the work site to maintain a neat appearance and shall restore work sites to their former condition upon job completion at no additional cost to CHEC.
13. CONTRACTOR acknowledges that safety is of the utmost importance in every aspect of this contract. CONTRACTOR shall comply with all work rules, including, but not limited to drug screening of workers, and specialized safety training for all safety programs by employing good safety practices and conducting regular, frequent safety meetings. CONTRACTOR will adhere immediately to notice of any safety issue, whether written or verbal. CONTRACTOR will notify CHEC immediately of any unsafe working condition encountered by CONTRACTOR. CONTRACTOR will be solely responsible for the safety of its workers and its work areas, including ingress and egress to and from the work area. CONTRACTOR shall perform all work in accordance for all safety and health laws and codes, including, but not limited to, OSHA rules and regulations and all Hazard Communications Programs required under any such laws and codes. The CONTRACTOR shall indemnify and hold CHEC harmless from any and all charges, claims, or assertions in the event of any safety and health law violations by the CONTRACTOR.
14. CONTRACTOR shall at all times take all reasonable precautions for the safety of employees or any third party from the work and of the public and shall comply with all applicable provisions of Federal, State, and Local laws, rules and regulations and building and construction codes in addition to the safety rules and procedures of CHEC. The CONTRACTOR shall provide CHEC, within twenty-four (24) hours of any incident or event, notice of any incident, event, or accident in a written report of said investigation. CONTRACTOR, due to unforeseen circumstances not contemplated in any project or assignment, may request a change in the scope of work under contract within a reasonable time not to exceed five (5) days. No such changes are approved except in writing by CHEC. If CONTRACTOR initiates a substitution, deviation, or change, which affects the work or project, and causes expenses to CHEC, CONTRACTOR shall be liable for the expenses thereof.
15. CONTRACTOR shall cooperate with all other contractors and trades and other employees of CHEC whom may be affected in any way by the work of the CONTRACTOR in order to avoid conflicts.
16. CONTRACTOR guarantees all work against faulty and improper materials and workmanship for a period of one (1) year of the final acceptance by CHEC, except where guarantees or warranties for longer terms are specified herein or in the contract documents, in which case the longer term shall apply. At no additional cost to CHEC, the CONTRACTOR shall correct any deficiencies which occur during the warranty period, all to the reasonable satisfaction of CHEC.
17. **Defective Work.** Payment otherwise due may be withheld by CHEC on account of defective work not remedied, claims filed, evidence indicating probability of filing of claims, or failure to provide any report and/or documentation required by this agreement, failure of CONTRACTOR to make prompt payment to its Subcontractor(s) or to make payments for materials for labor, or a reasonable doubt that the work contemplated by this agreement can be completed for the balances then unpaid. If such causes are not remedied within forty-eight (48) hours after written notice, CHEC may rectify the same at CONTRACTOR'S expense. CHEC may off-set any sums due CONTRACTOR hereunder for any liquidated or unliquidated obligation owed by CONTRACTOR.

- 18. Inspection.** CHEC may observe and inspect CONTRACTOR'S work at any time. CONTRACTOR will notify CHEC in writing when the work is completed and ready for final inspection. The CONTRACTOR shall promptly correct all work rejected by CHEC or which fails to conform to cited standards, specifications, or other requirements. The CONTRACTOR shall bear all costs for correcting said work.
- 19.** The acceptance of any materials, equipment, or any workmanship by CHEC shall not preclude the subsequent rejection thereof if such materials, equipment or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment, or workmanship found defective before final acceptance of the construction, shall be replaced or remedied, as the case may be, by and at the expense of the CONTRACTOR. The CONTRACTOR shall not be entitled to any payment hereunder so long as any defective material, equipment, or workmanship in respect to the project, of which the CONTRACTOR shall have had notice and has not replaced or remedied the same.
- 20.** CONTRACTOR represents and warrants that CONTRACTOR will not infringe or violate any patent and further agrees to hold harmless and indemnify CHEC from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any materials or equipment used in the construction of the project and/or other intellectual property infringement claims by any third party.
- 21.** Any copyright works, ideas, discoveries, inventions, patents, products, or other information, including all intellectual property rights (collectively referred to as work product) developed in whole or in part by the CONTRACTOR in connection with the services will be the exclusive property of CHEC. Upon request, CHEC will execute within a reasonable period of time all documents necessary to confirm or perfect the exclusive ownership of CHEC to said work product.
- 22.** Unless otherwise specified in the payment schedule under Section 2, CHEC shall have the right to pay CONTRACTOR ninety percent (90%) of the total price for such effort with the remaining ten percent (10%) to be paid upon acceptance of the work by CHEC. The 90% billing will be invoiced upon completion of the work. The 10% billing will be invoiced upon notice of CHEC'S acceptance of said work. If the work being performed is of an on-going service nature based upon monthly rates, charges for a partial month services shall be prorated on the basis of a thirty-day month. Prior to any payment, CONTRACTOR shall prove that its work is free and clear from any and all liens and claims of any third party and shall furnish to CHEC, if appropriate, lien waivers and releases in connection with the final payment and all interim progress payments.
- 23.** CONTRACTOR shall keep each site free and clear of all liens, claims, and charges including, but not limited to, materials, laborers, and mechanics liens arising out of services performed or materials supplies by CONTRACTOR in connection with this agreement. If the CONTRACTOR fails to satisfy any lien, claim, or charge within a reasonable period of time, not to exceed thirty (30) days, CHEC, without limiting any of its other rights or remedies, may satisfy the lien, charge, or claim, and thereafter, deduct the cost thereof, including reasonable attorney's fees, from any amount due the CONTRACTOR or invoice the CONTRACTOR, in which event, said invoice shall be paid within thirty (30) days. CONTRACTOR acknowledges and agrees that its failure to make timely payments to any approved Subcontractor, laborer, materialman, and suppliers constitute a material breach of this agreement.
- 24.** CONTRACTOR shall not assign this agreement or any money due hereunder without the written consent of CHEC. Any assignment of this agreement or money due without CHEC'S consent shall be null and void and the assignee shall acquire no rights thereunder against CHEC.
- 25.** CONTRACTOR shall not sublet or assign this agreement or any portion of the same to a subcontractor without the prior written consent of CHEC.
- 26.** CONTRACTOR shall pay all sales, consumer, use and any other tax imposed by law under Federal, State, and Local tax laws, rules and regulations.

- 27.** The CONTRACTOR shall comply with the requirements and provisions of the Fair Labor Standards Act, Davis-Bacon Act¹, Copeland Anti-Kickback Act¹, Contract Work Hours and Safety Standards Act, Clear Air Act, Federal Water Pollution Control Act, Energy Policy and Conservation Act, and any other act, rule, or regulation applicable to wages and hours and other employee protections which would apply to the CONTRACTOR and any employee thereof.
- 28.** CONTRACTOR at its sole expense shall maintain in effect from the date that work commences through the end of the warranty period liability insurance, workers' compensation insurance, and vehicular insurance on any vehicle used by CONTRACTOR. A certificate of insurance stating the limits in coverage be submitted to CHEC. CONTRACTOR may not enter the jobsite premise or perform any work until said insurance policies are in effect. In the event the CONTRACTOR enters onto the site prior to the execution of such certificates, such entry shall not constitute a waiver by CHEC. CONTRACTOR acknowledges that the failure to meet all insurance requirements, cancellation of said policies, or the lapse or suspension of the required insurance for any reason shall be considered a material breach of this agreement and CHEC shall be entitled to exercise its termination rights, together with other rights contained in this agreement, and shall have the right to prohibit the CONTRACTOR from entering the worksite. Failure of CHEC to detect that a CONTRACTOR has not submitted certificates or other evidence of insurance, shall not be considered or construed as a waiver or other impairment of CHEC'S rights related to the insurance provisions. In the event the CONTRACTOR does not procure and maintain said insurance, CHEC shall have the right, but not the duty, to procure and maintain the insurance at the sole costs to the contract, which shall be charged against and deducted from any monies then due and owing to the CONTRACTOR. CONTRACTOR shall also insure materials and equipment under its applicable insurance coverage. CONTRACTOR shall be responsible for the deductible portion of each claim not covered by said builder's risk insurance and/or liability insurance.
- 29.** The contract may include plans, specifications, general and special conditions, addenda, and other contractual documents that are incorporated by reference into this Contract and made a part of the Contract. CONTRACTOR acknowledges that CONTRACTOR is familiar with the terms of the contract including the plans, specifications, general and special conditions, addenda, and other contractual documents that may be in electronic format. The CONTRACTOR has the right to request hard copies of any of such electronic documents. By accepting the electronic files and documents, the CONTRACTOR agrees that the CONTRACTOR will use commercially reasonable efforts to provide electronic versions that are virus-free and uncorrupted. CHEC cannot warrant the electronic documents or files are complete without defects or inaccuracies and that the files are virus-free. To the extent that the electronic documents and/or files differ from the printed documents, any conclusion or information gained from the electronic files are at CONTRACTOR'S own risk and no claim shall be made against CHEC regarding the same. All information disclosed by CHEC through delivery of the electronic files and documents shall be confidential and proprietary and shall not be disclosed, distributed, or shared with any party without CHEC'S prior written consent. No implied license or any intellectual property rights are granted or conveyed under this agreement.
- 30.** CONTRACTOR shall perform all work covered by this agreement in complete accordance with all applicable standards and recommended practices, and in accordance with all tolerances as set forth in the specific standards and specifications. CONTRACTOR shall exercise prudence so that actual final conditions and details shall result in alignment of finishes and completed projects in accordance with industry standards, and contractual provisions and specifications.

¹ Not required for FEMA Public Assistance and Hazard Mitigation Grant Program contracts.

- 31.** CONTRACTOR will perform its work ethically, with the upmost integrity, and in accordance with any and all applicable rules, regulations, policies, codes of conduct, programs, or other applicable rules including any and all programs, policies, or other requirements of CONTRACTOR and CHEC.
- 32. Default.** Upon default or breach of any terms and/or conditions of this agreement or the contract documents or the insolvency of the CONTRACTOR, CHEC shall provide written notice of such default or breach to the CONTRACTOR wherein the CONTRACTOR shall have three (3) work days after receipt of written notice to cure such default or breach. Should the CONTRACTOR fail to cure the default or breach within the specified period, CHEC shall have the right, without terminating the agreement, to provide through itself or through others, any labor, materials, supplies, equipment, tools, plant, services, supervision and/or administration for the performance of the work, or any portion thereof, and deduct the cost thereof from any money due or thereafter to become due to the CONTRACTOR under this agreement.
- 33. Non-solicitation.** CONTRACTOR recognizes that CHEC'S business success is related to its relationship with its members and various vendors and third parties. In order to protect CHEC'S business relationships and goodwill, CONTRACTOR agrees that during the term of this agreement and for two (2) years following this agreement, that the CONTRACTOR will not communicate, solicit, or attempt to directly deal with any member and/or vendor of CHEC. Any breach of this paragraph shall be considered a material breach of this agreement. In the event of a breach, the CONTRACTOR agrees that CHEC shall be entitled to injunctive relief. Notwithstanding the above, CONTRACTOR shall be permitted to work for any member, vendor, or customers for which it had a pre-existing relationship. The CONTRACTOR agrees that its employees, agents, and representatives will not solicit and/or attempt to hire, negotiate with, and/or cause the separation of a CHEC employee to terminate the employee relationship with CHEC and thereafter hire said employee.
- 34. Indemnification.** To the fullest extent permitted by law, CONTRACTOR hereby agrees to save, defend, indemnify and hold harmless CHEC, its respective officers, directors, representatives, agents, and employees from any and all claims, suits, liens, judgments, premiums for bonds, damages, whether actual, special, consequential, or liquidated, losses and expenses, including reasonable attorney's fees and court costs arising out of or in part and in any manner from any injury, death, or any claim of any third party resulting from the acts, omissions, breach, or default of CONTRACTOR, its officers, directors, agents, employees, or subcontractors in connection with the work undertaken under this contract and/or the performance of any portion of the work under this contract. CONTRACTOR will defend and bear all costs of defending any action or proceedings brought against CHEC arising out of such acts, omissions, breach, or default, together with any claim relative to wage and hour and the payment of any employee tax or other tax and/or any claims asserted by any regulatory relationship which challenges the independent contractor status of the CONTRACTOR herein. CONTRACTOR further agrees to defend, indemnify, and hold harmless CHEC, its respective officers, directors, representatives, agents, and employees, from and against any and all liabilities which may be asserted by an employee or former employee of CONTRACTOR and from and against any and all liability arising out of the CONTRACTOR'S violation of any law, ordinance, regulation, code or other legal requirement or CONTRACTOR'S failure to comply with the terms of this agreement. The indemnity obligations of the CONTRACTOR shall survive the termination or expiration of this agreement and shall remain in full force and effect. Further, the CONTRACTOR shall defend, indemnify and hold harmless CHEC, its respective officers, directors, representatives, agents, and employees from all liens and claims filed or asserted against CHEC, its directors, officers, representatives, agents, and employees or against CHEC properties or facilities for services performed or materials or equipment furnished by CONTRACTOR, his/its/their subcontractors and suppliers of any tier from all losses, demands, and causes of action arising out of any such lien or claim. CONTRACTOR shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise, and shall notify CHEC promptly upon removing said lien. If CONTRACTOR does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, CHEC shall have the right (without any obligatory

obligation) to pay all funds necessary to obtain such discharge or release and to deduct all amounts so paid from any amounts due to CONTRACTOR. CONTRACTOR'S obligation to indemnify against any attorney's fees, costs, or expenses in connection with the defense of any claim or cause of action, shall be construed as a separate item of indemnification that shall be absolute regardless of whether such claims or causes of actions are invalid, groundless, or arise from the sole or partial negligence of any indemnitee.

- 35. Disputes and Arbitration.** This agreement shall be interpreted under the laws of the State of North Carolina and, except as provided in the Arbitration clause herein, any claim must be brought in the Superior Court or District Court of Dare County and shall be decided by a judge. In all proceedings, each party waives the right of a jury trial and that no dispute or controversy shall interfere with the work and CONTRACTOR shall proceed diligently with the work without causing interruption, deficiency, or delay. Failure of either party to insist on performance of any provision within this agreement shall not be construed as a waiver of that provision. Prior to filing any lawsuit, any controversy or claim between the CONTRACTOR and CHEC arising or related to this agreement or breach thereof shall be submitted to arbitration in accordance with the North Carolina Arbitration Rules. It is specifically agreed that a retired Superior Court or District Court Judge shall be appointed as the arbitrator. The arbitration shall be conducted in Columbus County or Brunswick County, North Carolina. Notice and demand of the arbitration may be submitted by either party to the other at the addresses indicated below in accordance with the Notice section of this contract. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law.
- 36. Environmental Control and Compliance.** CONTRACTOR must comply with all environmental rules and regulations and shall not permit the discharge of hazardous substances, including, but not limited to petroleum, flammables, explosives, radioactive materials, PCBs, asbestos, acid, sludge, or other items as defined by federal or state law as hazard materials. CONTRACTOR shall maintain adequate records and shall keep and properly dispose of all hazardous materials as required by federal and state law and shall indemnify CHEC and hold CHEC harmless from all claims related thereto.
- 37. Force Majeure.** Neither CHEC nor CONTRACTOR, their affiliates or subsidiaries, shall be liable in any way for delay, failure in performance, loss or damage to the extent such delay or failure is caused by any of the following force majeure conditions: fire, strike, embargo, power blackout, earthquake, volcanic action, flood, war, water, labor disputes, acts of God, or other causes beyond their reasonable control, provided, however, each party shall notify the other of the occurrence of a Force Majeure and the parties agree to allow the CONTRACTOR an equitable extension of time for the performance of work provided CHEC is correspondingly entitled to such equitable extension of time and under no circumstances shall CONTRACTOR be entitled to any increase in the price or to damages as a consequence or result of such delay.
- 38. Termination.** Should CONTRACTOR at any time fail to comply with the terms and provisions of this agreement, the specific specifications and conditions of any project, or a term contained in the general provisions or addenda annexed to the contract, fails in any respect to prosecute the work covered by this agreement with promptness and diligence, fails to perform work of the quality required by the contract, or fails to correct a deficit as asserted by CHEC within the relevant time period, CHEC may in any of such events at CHEC'S option, terminate the CONTRACTOR for the work under this agreement and shall have the right to re-enter upon said premises and take possession for the purpose of completing the work contemplated hereunder. CONTRACTOR shall not be entitled to receive any further payments but shall nevertheless remain liable for any damages which CHEC may incur. If the expenses incurred by CHEC in completing the work exceed the unpaid balances, CONTRACTOR shall pay CHEC the difference, together with all other damages incurred by CHEC as a result of CONTRACTOR'S default. CHEC further reserves the right at any time, with seven (7) days written notice to CONTRACTOR, to terminate this agreement for the convenience of CHEC for any reason and without any default under this agreement. Upon said termination, the CONTRACTOR shall be entitled to receive as compensation the actual common, necessary, and reasonable costs of performing

the work to the date of said termination as determined by CHEC. CONTRACTOR shall make records available to CHEC. In no event shall any balance due under the terms hereof exceed the total contracted amount.

- 39. Bankruptcy.** In the event CONTRACTOR is adjudged bankrupt, makes a general assignment for the benefit of creditors, a receiver is appointed by a court of competent jurisdiction, or a financial situation affects the CONTRACTOR'S ability to perform this contract, CHEC shall be entitled to request of the CONTRACTOR evidence, assurance, or proof of CONTRACTOR'S ability to perform under this contract. Failure to produce and provide such satisfactory assurance within five (5) days, this request shall entitle CHEC to terminate this agreement. Upon termination of the agreement, CONTRACTOR shall reimburse CHEC all costs associated with the completion of the work, or CHEC may off-set the costs of completion against any balance due under the contract.
- 40. Confidentiality.** CONTRACTOR, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of CONTRACTOR, or divulge, disclose, or communicate in any manner, any information that is proprietary to CHEC. CONTRACTOR and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this contract. Any oral or written waiver by CHEC of these confidentiality obligations which allows CONTRACTOR to disclose CHEC'S confidential information to a third party will be limited to a single occurrence tied to the specific information disclosed to the specific third party, and the confidentiality clause will continue to be in effect for all other occurrences.
- 41. Severability.** This agreement cannot be changed, modified, or altered orally. Should any term or provision of this agreement be found invalid, illegal or unenforceable, such term or provision shall be deemed severed from this agreement and it shall not affect the validity and enforcement of all remaining provisions and conditions of this agreement.
- 42. Notices.** Any notice required, permitted, or given under this agreement may be given by certified mail, return receipt requested, or electronically transmitted to the e-mail address indicated on the signature page. Either party who desires to change said address, has the affirmative duty of notifying the other party.
- 43. Debarment and Suspension.** This contract is a covered transaction for purposes of 2 CFR 180 and 2 CFR 3000. As such the contractor is required to verify that none of the contractor, its principals, or its affiliates are excluded or disqualified. The contractor must comply with 2 CFR 180 and 2 CFR 3000 and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by CHEC. If it is later determined that the contractor did not comply with 2 CFR 180 and 2 CFR 3000, in addition to remedies available to CHEC, the Federal Government may pursue remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180 and 2 CFR 3000 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.
- 44. Byrd Anti-Lobbying Amendment.** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC § 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. See Addendum B, "Certification Regarding Lobbying".

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

ADDENDUM B
Certification Regarding Lobbying

The undersigned 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 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 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 USC § 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 USC § 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

ADDENDUM C
INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the preceding page in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Sections 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722 – 4733).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTION ON THE NEXT PAGE)

- (1) The prospective lower tier participant certifies, by submission of this 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 is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PR/Award Number or Project Name

Organization Name

Name and Title of Authorized Representative

Signature

Date

Attachment 1

BIDDER'S STATEMENT

In consideration of this contract, if awarded, the Vendor agrees without reservation to CHEC's Terms & Conditions, Indemnification Clause, and insurance clause herein. Which will become a part of the contract, the signing of this statement confirms the Vendor's acceptance.

DATE: _____

FIRM NAME: _____ EMAIL: _____

SUBMITTED BY: _____

Print Name & Title

SIGNATURE: _____

WITNESS: _____

**NOTICE: THIS SIGNATURE PERTAINS TO THE ACKNOWLEDGEMENT AND
ACCEPTANCE OF THE ENTIRE TERMS & CONDITIONS. ANY EXCEPTIONS TO
THIS AGREEMENT SHOULD BE NOTED SEPARATELY.**

FAILURE TO COMPLETE ABOVE NOTED DOCUMENT WILL RESULT IN

NON-COMPLIANCE WITH THESE SPECIFICATIONS.