



STATE OF NORTH CAROLINA

DIVISION OF PURCHASE & CONTRACT

Invitation for Bids #: DPC-1116866498-CI

FUELS

Date Issued: November 14, 2024

Bid Opening Date: December 18, 2024

At 3:00 PM ET

Direct all inquiries concerning this IFB to:

Santiago Tella

Consultant

E-mail: Santiago.tella@doa.nc.gov

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

Refer <u>ALL</u> Inquiries regarding this IFB to: All correspondence with vendors shall be through the Ariba Sourcing Tool. Questions will be received in the Ariba Sourcing Tool (only) based on the schedule in Section 2.4	Invitation for Bid #: DPC – 1116866498
	Phase 1 - Unpriced Bid Responses will be publicly opened: December 18, 2024 at 3:00 PM Microsoft Teams <u>Need help?</u> <u>Join the meeting now</u> Meeting ID: 270 541 954 751 Passcode: RstJEr Dial in by phone <u>+1 984-204-1487,,125351760#</u> United States, Raleigh <u>Find a local number</u> Phone conference ID: 125 351 760# Join on a video conferencing device Tenant key: ncgov@m.webex.com Video ID: 113 340 777 2 <u>More info</u>
For Statewide Use of All State Entities	Commodity # and Description: 1510 - Fuels
STC #: 1510 Fuel	

EXECUTION

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

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

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

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

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


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

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

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

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

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

COMPLETE/FORMAL NAME OF VENDOR: James River Solutions		
STREET ADDRESS: 10487 Lakeridge Parkway, Suite 100	P.O. BOX:	ZIP:
CITY & STATE & ZIP: Ashland, VA 23005	TELEPHONE NUMBER: 804-358-9000	TOLL FREE TEL. NO: 1-800-825-5599
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #21): Same as above		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR: Tracy Little - Managing Partner		FAX NUMBER: 804-359-6307
VENDOR'S AUTHORIZED SIGNATURE: 	DATE: 1/2/25	E-MAIL: tracy@jrpenegy.com / bbailey@jrpenegy.com

VALIDITY PERIOD

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

BID ACCEPTANCE

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

<p>FOR STATE USE ONLY: Offer accepted and Contract awarded on date of <u>2/26/2025</u> as indicated,</p> <p>DocuSigned by: by <u>Shayla Parker</u> (Authorized Representative of Purchase and Contract)</p> <p><small>4BE4BF7023D94F4...</small></p>
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EBRIDGE BUSINESS SOLUTIONS, LLC SUPPLIER TERMS AND CONDITIONS2

1.0 PURPOSE AND BACKGROUND

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

The State through the Department of Administration (DOA) Division of Purchase & Contract (P&C) is seeking qualified Vendors to establish a Statewide Term Contract(s) to furnish and deliver the State's requirements for various fuel types throughout the State of North Carolina, on an "as needed" basis, if and when ordered by State Departments, Agencies, and Higher Education Institutions during the contract period.

This solicitation covers the procurement of six fuel categories:

- Propane: Used for heating, cooking, and emergency backup power.
- Diesel: Both on-road (ULSD) and off-road diesel for transportation and equipment.
- Gasohol: A blend of gasoline and ethanol for use in State-owned vehicles.
- Regular Conventional Non-Ethanol Unleaded Gasoline: For various state-operated vehicles and equipment.
- Emergency Source Propane: For critical infrastructure and services during emergencies.
- Emergency Source Fuels: Ensuring availability of fuel during periods of natural disasters and other emergencies.
- Aviation Fuels.

The fuels to be procured under this Contract are essential for the continuous operation of State agencies, community colleges, and higher education institutions. These fuels support a wide range of activities, from daily transportation needs to emergency power generation. The implementation of this STC aligns with the State's commitment to efficient resource management and cost-effective procurement practices.

Currently, these fuel categories are managed under separate contracts that are set to expire by December 31, 2024. Consolidating these contracts is expected to enhance procurement efficiency, ensure reliable fuel supply, and achieve cost savings through economies of scale.

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

The intent of this Invitation for Bids (hereinafter, "IFB") is to receive pricing from Vendors which will offer savings to the State and confirm, through Vendors' submission of bids, their ability to meet the State's needs. This solicitation will be conducted as a reverse auction, allowing the State to obtain competitive pricing by enabling Vendors to bid against each other in real-time. The DOA has partnered with eBridge to host the reverse auction on its web-based bidding platform.

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

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

The intent of this solicitation is to award the minimal number of Term Contracts required to service all fuel types and zones as outlined in the attached pricing workbook.

1.1 CONTRACT TERM

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

At any time during the contract period the State may conduct an Open Enrollment process by posting a solicitation in the Ariba Sourcing Tool for the purpose of adding new Vendor(s) to the Contract, to provide for a wider coverage of various fuel types.

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

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

1.2 ESTIMATED SPEND

Based on the historical usage of the STC, the estimated spend for the initial three (3) year term of the Contract is listed below for each category. However, this amount is not guaranteed and could be more or less than the historical expenditure during the contract period. No maximum or minimum quantities are guaranteed.

Categories	Estimated 3-Year Spend
Category A – Propane.	\$15,004,762.96
Category B - On-Road Diesel (ULSD).	\$75,611,842.05
Category C - Off-Road Diesel (Dyed).	<i>Note: Specific breakdown by fuel type unavailable currently</i>
Category D - Biodiesel	
Category E - Gasohol (E-10, E-85).	\$71,974,185.68
Category F - Regular Conventional Non-Ethanol Unleaded Gasoline (87 Octane).	\$1,776,614.75
Category G - Emergency Source Propane.	<i>Not available</i>
Category H - Emergency Source Fuels (E-10, Ultra-Low Sulfur #2, Propane, Kerosene, Aviation Gasoline, Jet A Fuel).	<i>Not available</i>
Category I – Aviation Fuels	\$233,152.07

2.0 GENERAL INFORMATION

2.1 INVITATION FOR BID DOCUMENT

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

2.2 E-PROCUREMENT FEE

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

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

What is the Ariba Network?

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

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

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

2.3 NOTICE TO VENDORS REGARDING IFB TERMS AND CONDITIONS

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

and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this IFB.

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

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

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

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

2.4 IFB SCHEDULE

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

PHASE 1 – UNPRICED IFB RESPONSE		
Event	Responsibility	Date and Time
Issue IFB	State	November 14, 2024
Hold Pre-Bid Conference/Site Visit	State	November 20, 2024, at 11:00 AM ET
Submit Written Questions	Vendor	November 25, 2024, at 1:00 PM ET
Provide Responses to Questions	State	December 11, 2024
Submit IFB Response	Vendor	December 18, 2024, at 3:00 PM ET
PHASE 2 – REVERSE AUCTION		
Event	Responsibility	Date and Time
Phase 2 Formal Invitation	eBridge	January 6, 2025
eBridge Bid System Training	eBridge/Vendor	January 7-10, 2025
Initial Bid Pricing Due	Vendor	January 13, 2025
Reverse Auction	Vendor	January 15, 2025, at 10:00 AM ET
Intended Contract Award	State	January 31, 2025

2.5 PRE-BID CONFERENCE

Urged and Cautioned Pre-Bid Conference

Date: 11/20/2024

Time: 11:00 AM EST

Location: Microsoft Teams

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 297 305 311 814

Passcode: Az8K6w

Dial in by phone

[+1 984-204-1487,,715874131#](#) United States, Raleigh

[Find a local number](#)

Phone conference ID: 715 874 131#

Join on a video conferencing device

Tenant key: ncgov@m.webex.com

Video ID: 111 808 256 1

[More info](#)

Contact #: Shayla Parker shayla.parker@doa.nc.gov 984.236.0233

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

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

2.6 BID QUESTIONS

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

Questions related to the content of the solicitation, or the procurement process should be directed to the person on the title page of this document via the Sourcing Tool's message board by the date and time specified in the IFB SCHEDULE Section of this IFB. Vendors will enter "IFB # 1116866498 – Questions" as the subject of the message. Question submittals should include a reference to the applicable IFB section. This is the only manner in which questions will be received.

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

Questions received prior to the submission deadline date, the State's response, and any additional terms deemed necessary by the State will be posted in the Sourcing Tool in the form of an addendum and shall become an Addendum to this IFB. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a

question or otherwise in connection with this IFB, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this IFB.

2.7 UNPRICED BID SUBMITTAL

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

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

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

Tips for Using the Sourcing Tool

1. Vendors should review available training and confirm that they are able to access the Sourcing Event, enter responses, and upload files well in advance of the date and time response are due to allow sufficient time to seek assistance from the North Carolina eProcurement Help Desk.
2. Vendors may submit their responses early to make sure there are no issues, and then submit a revised response any time prior to the response due date and time. The State will only review the most recent response.
3. Vendors should respond to all relevant sections of the Sourcing Event. Certain questions or items are required in order to submit a response and are denoted with an asterisk. The Sourcing Tool will not allow a response to be submitted unless all required items are completed. The Sourcing Tool will provide error messages to help identify any required information that is missing when response is submitted.
4. Simply saving your response in the Sourcing Tool is not the same as submitting your response to the State. Vendors should make sure they complete the submission process and receive a message that their response was successfully submitted.
5. **Only Unpriced Bid Responses submitted through the Content Section of the Ariba Sourcing Event will be considered. Bid Responses submitted through the Message Board will not be accepted or considered for award.**

2.8 UNPRICED BID RESPONSE CONTENTS

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

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

Phase I – Unpriced Bid Response Requirements

- a) Cover Letter, must include the following: (i) a statement that confirms that the Vendor has read the IFB in its entirety, including all links, and all Addenda released in conjunction with the IFB; (ii) a statement that Vendor agrees to perform in

accordance with the scope of work, requirements, and specifications contained herein; and (iii) Vendor's agreement to comply with all instructions, terms and conditions, and attachments.

- b) Title Page: Include the company name, address, phone number and authorized representative along with the Bid Number.
- c) Completed and signed version of EXECUTION PAGES, along with the body of the IFB.
- d) Signed receipt pages of any addenda released in conjunction with this IFB, if required to be returned.
- e) Vendor Response:
 - a. Section 4.11 – Vendor Experience
 - b. Section 4.13 – Sustainability
 - c. Statement and documentation to verify Vendor's responsibilities stipulated and required under Section 5 of this IFB.
- f) Completed and signed version of ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION.
- g) Completed and signed version of ATTACHMENT E: CUSTOMER REFERENCE FORM.
- h) Completed and signed version of ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR.
- i) Completed and signed version of ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION.
- j) Completed and signed version of CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS and OMB STANDARD FORM LLL.
- k) Completed, signed and notarized Certifications and Affidavit (Attachments A-E of 'Attachment H - Federal Requirements and Special Conditions for Materials, Equipment and Supplies').
- l) Completed version of ATTACHMENT A: PRICING WORKBOOK showing the zones for each fuel type. **Do not include pricing in Attachment A. Pricing will only be accepted through eBridge's bid system during the reverse auction.**

2.9 ALTERNATE BIDS

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

2.10 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

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

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

ASTM: American Society for Testing and Materials. An international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services.

BID: A formal offer submitted in response to this IFB.

DELIVERY COST: The fee charged by the vendor for delivering the specified fuel to the designated locations.

DOA: Department of Administration. The agency that manages state government operations in North Carolina.

EMERGENCY SOURCE FUELS: Fuels required for critical infrastructure and services during emergencies.

EPA: Environmental Protection Agency. The federal agency responsible for regulating environmental policies.

EXECUTIVE ORDER 80: An executive order issued by Governor Cooper to address climate change and transition to a clean energy economy in North Carolina.

FUEL CATEGORIES:

- **Propane:** Used for heating, cooking, and emergency backup power.
- **Diesel:** Both on-road (ULSD) and off-road diesel for transportation and equipment.
- **Biodiesel:** A renewable fuel made from biological materials like vegetable oil or animal fat. It can be blended with petroleum diesel to reduce emissions and is used in diesel-powered vehicles and equipment.
- **Gasohol:** A blend of gasoline and ethanol for use in state-owned vehicles.
- **Regular Conventional Non-Ethanol Unleaded Gasoline:** For various state-operated vehicles and equipment.
- **Emergency Source Propane:** For critical infrastructure and services during emergencies.
- **Emergency Source Fuels:** Ensuring availability of fuel during natural disasters and other emergencies.
- **Aviation Fuels:** Used in the aviation industry and includes AV Gasoline and jet fuel.

G.S.: General Statutes. The codified laws of North Carolina.

NC EPROCUREMENT: North Carolina's electronic procurement system that provides a portal for state procurement activities.

NCAC: North Carolina Administrative Code. The codified administrative rules of North Carolina.

NC DOA: North Carolina Department of Administration. The department is responsible for managing state government operations.

OPIS: Oil Price Information Service. A leading provider of petroleum pricing and news information.

P&C: Purchase & Contract Division. The division within the NC DOA is responsible for procurement of Statewide Term Contracts.

REVERSE AUCTION: The electronic system that will be used by the state to collect bid pricing during **Phase II** of this IFB. A bid process that allows vendors the opportunity to continue lowering their previous offer in an attempt to be the lowest bidder and potentially win the business.

SOURCING TOOL: The electronic system used by the state to manage the sourcing process during **Phase I** of this IFB.

STATEWIDE TERM CONTRACT (STC): A contract established for the procurement of goods and services that is available for use by all state agencies, departments, institutions, community colleges, and universities.

ULSD: Ultra-Low Sulfur Diesel. Diesel fuel that has significantly lower sulfur content, which reduces emissions.

3.0 METHOD OF AWARD AND BID EVALUATION PROCESS

3.1 METHOD OF AWARD

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

A. Line Item Low-Cost

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

The bid for a line item will be determined by the total bid for each zone within each category of each lot (see **ATTACHMENT A – PRICING WORKBOOK**).

While the intent of this IFB is to award contracts by geographic zone to the responsive and responsible Bidder with the lowest bid for each zone in each category, the State reserves the right to make separate awards to different Vendors for one or more zones, to not award one or more zones, to award by category, or to cancel this IFB in its entirety without awarding a contract if it is deemed most advantageous to the State.

B. Calculating the Low Bid - Categories and Evaluation Method

1. Categories

- Category A – Propane.
- Category B - On-Road Diesel (ULSD).
- Category C - Off-Road Diesel (Dyed).
- Category D - Biodiesel
- Category E - Gasohol (E-10, E-85).
- Category F - Regular Conventional Non-Ethanol Unleaded Gasoline (87 Octane).
- Category G - Emergency Source Propane.
- Category H - Emergency Source Fuels (E-10, Ultra-Low Sulfur #2, Propane, Kerosene, Aviation Gasoline, Jet A Fuel).
- Category I – Aviation Fuels

2. Evaluation Method

- **Total Bid for Each Zone**
 - The evaluation will be based on the total bid price for each zone within each category outlined in Attachment A – Pricing Workbook.

3. Price Calculation

- **Base Price per Gallon**
 - The base price per gallon for each fuel type and grade shall be the OPIS Real-Time Rack Average Gross Price, FOB Greensboro, NC for each fuel type, published by the “Oil Price Information Service” (OPIS), Two Washingtonian Center, 9737 Washingtonian Blvd., Suite 100, Gaithersburg, Maryland 20878. **For bidding purposes only, during the reverse auction all participating vendors will assuming a base price (OPIS Real-Time Rack Average) of \$1.00.**
- **Net Price Differential per Gallon**
 - The net price differential is the vendors offered all-inclusive delivered per gallon markup or discount to the OPIS Real-Time Rack Average Gross Price, FOB Greensboro, NC for each geographic zone, fuel type and delivery type. The net price differential shall be FOB destination, inside delivery and exclusive of only any applicable government levies/taxes.
- **Total Price (Base Price + Net Price Differential):**
 - The total price for each zone under each category and lot will be calculated by adding the offered net price differential per gallon to the base price per gallon.
 - A.** Price entered above \$1.00 during the reverse auction will indicate the differential as a markup to the OPIS Real-Time Rack Average Gross Price, FOB Greensboro, NC, outlined under Base Price per Gallon above. **Example: a total bid price of \$1.035 is an offered net differential of +\$0.035 to OPIS.**
 - B.** Price entered below \$1.00 during the reverse auction will indicate the differential as a discount to the OPIS Real-Time Rack Average Gross Price, FOB Greensboro, NC, outlined under Base Price per Gallon above. **Example: a total bid price of \$0.965 is an offered net differential of -\$0.035 to OPIS.**

4. Lot Breakdown

- There will be individual lots for each of the two delivery types (Bulk Transport/Tankwagon). Each lot will list a separate category for each fuel type. Each category will be further broken down into eight geographic zones. During the reverse auction vendors may bid any or all zones within each category of each lot.
 - Lot 1 – Bulk Transport
 - A. **Propane:** Zones 1-8
 - B. **On-Road Diesel (ULSD):** Zones 1-8
 - C. **Off-Road Diesel (Dyed):** Zones 1-8
 - D. **Biodiesel:** Zones 1-8
 - E. **Gasohol (E-10, E-85):** Zones 1-8
 - F. **Regular Conventional Non-Ethanol Unleaded Gasoline (87 Octane):** Zones 1-8
 - G. **Emergency Source Propane:** Zones 1-8
 - H. **Emergency Source Fuels:** Zones 1-8
 - I. **Aviation Fuels:** Zones 1-8
 - Lot 2 - Tankwagon
 - A. **Propane:** Zones 1-8
 - B. **On-Road Diesel (ULSD):** Zones 1-8
 - C. **Off-Road Diesel (Dyed):** Zones 1-8
 - D. **Biodiesel:** Zones 1-8
 - E. **Gasohol (E-10, E-85):** Zones 1-8
 - F. **Regular Conventional Non-Ethanol Unleaded Gasoline (87 Octane):** Zones 1-8
 - G. **Emergency Source Propane:** Zones 1-8
 - H. **Emergency Source Fuels:** Zones 1-8
 - I. **Aviation Fuels:** Zones 1-8

5. Lowest Bid Determination

- Contract will be awarded to the responsive and responsible Bidder with the lowest total bid for each zone in each category of each lot.

6. State’s Discretion

- The State reserves the right to make separate awards to different Vendors for one or more zones, categories, lots; to not award one or more lots; or to cancel this IFB in its entirety without awarding a contract if it is considered to be in the best interest of the State.

The State will conduct a two-step competitive sealed bid process consisting of the following two phases.

Phase I – Unpriced Bid Response: Vendors shall submit an unpriced bid response, which include all requirements listed within this IFB (except price). The State shall review each bid response received to this IFB to confirm it meets the specifications and requirements of the IFB. The State reserves the right to waive any minor informality or technicality in bids received.

NOTE: No pricing shall be contained in the bid response submission. Pricing will only be accepted in Phase II during the online reverse auction and only from Bidders whose unpriced bid responses were found acceptable by the State during Phase I evaluations. Inclusion of any pricing the bid response submission shall constitute sufficient grounds to reject Vendor’s bid response.

All Bids must be received by the issuing agency not later than the date and time specified in the IFB SCHEDULE Section above, unless modified by Addendum. Vendors are cautioned that this is an Invitation for Bids, not a request to contract, and the

State reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the State.

At that date and time specified in the IFB SCHEDULE Section above, unless modified by Addendum, Phase I (the package containing the bid response requirement components of the Bid from each responding Vendor) will be publicly opened and the name of each Vendor announced publicly.

Upon completion of the Bid Administrative Review, those Vendors whose Requirements Bids have been deemed acceptable will be invited to the Reverse Auction.

Phase II – Reverse Auction: Vendors approved to move on to Phase II will receive a Formal Invitation email from eBridge to participate in the online reverse auction scheduled for the date and time listed in the IFB Schedule. These Bidders will be required to complete an interactive one-on-one bid system training session with eBridge. During the training eBridge will provide detailed instructions for placing bids during the live reverse auction and also for entering initial bids.

Vendors must also review the attached Exhibit 1: eBridge Reverse Auction Agreement and return the Electronic Bid Event Form as instructed, after invitation to participate in Phase II. By submitting a bid response, you are accepting that if awarded a contract, you will be obligated to pay a fee of \$0.015 per gallon to eBridge for each gallon of Propane, On-Road Diesel (ULSD), Off-Road Diesel (Dyed), Biodiesel, Gasohol (E-10, E-85), Regular Conventional Non-Ethanol Unleaded Gasoline (87 Octane), Emergency Source Propane, Emergency Source Fuels (E-10, Ultra-Low Sulfur #2, Propane, Kerosene, Aviation Gasoline, Jet A Fuel), Aviation Fuels and any other fuels purchased under the resulting contract from any entity.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

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

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

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

3.3 BID EVALUATION PROCESS

Only responsive submissions will be evaluated. **The State will conduct an evaluation of responsive Bid Responses, as follows:**

Bid responses will be received according to the method stated in the Unpriced Bid Submittal and Unpriced Bid Response Contents sections above. The State shall review each bid response received to this IFB to confirm it meets the specifications and requirements of the IFB. The State reserves the right to waive any minor informality or technicality in bids received.

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

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

Upon completion of Phase II – Reverse Auction, the State will evaluate final bid pricing collected during the reverse auction and determine the award method that is most advantageous to the State. The State will make Award(s) based on the evaluation and post the award(s) to **the electronic Vendor Portal (eVP)**, <https://evp.nc.gov>, under the IFB number for this solicitation. Award of a contract to one Vendor does not mean that the other bids lacked merit, but that, all factors considered, the selected bid was deemed most advantageous and represented the best value to the State.

For zones and/or categories only receiving one (1) bid response, the state reserves the right to negotiate with the single Vendor, require Vendor to submit a Best and Final Offer (BAFO) based on discussions and negotiations with the State, or to reject the offer.

3.4 PERFORMANCE OUTSIDE THE UNITED STATES

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

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

3.5 INTERPRETATION OF TERMS AND PHRASES

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

4.0 REQUIREMENTS

This Section lists the requirements related to this IFB. By submitting a bid response, the Vendor agrees to meet all stated requirements in this Section, as well as any other specifications, requirements, and terms and conditions stated in this IFB. If a Vendor is unclear about a requirement or specification or believes a change in a requirement would allow for the State to

receive a better bid, the Vendor is encouraged to submit these items in the form of a question during the question-and-answer period in accordance with the Bid Questions Section above.

4.1 PRICING

Pricing collected during the reverse auction will be separated into two lots based on delivery type (Transport/Tankwagon). Each lot will list a separate category for each of the eight fuel types. Each category will be further broken down into eight geographic zones (see next page for zone breakdown).

During the reverse auction approved Vendors will bid a Total Price (base price + net price differential) for each zone under each category (fuel type) within each lot (delivery type). **See Section 3.0 Method of Award And Bid Evaluation: B. 3. Price Calculation for information on determining total price.**

Vendors have the option to bid any or all zones within each category of each lot. **Awarded Vendor will be required to service any eligible entity purchasing off of the awarded contract that is located within the awarded zone.**

There are 100 counties within the State of NC. These 100 counties have been broken up into the following eight geographic zones.

<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>	<u>Zone 5</u>	<u>Zone 6</u>	<u>Zone 7</u>	<u>Zone 8</u>
Bertie	Beaufort	Bladen	Richmond	Guilford	Buncombe	Stokes	Edgecomb
Camden	Craven	Brunswick	Scotland	Cabarrus	Cherokee	Alleghany	Nash
Chowan	Hyde	Columbus	Anson	Davidson	Clay	Ashe	Franklin
Currituck	Pitt	Cumberland	Chatham	Davie	Graham	Avery	Granville
Dare	Wilson	Duplin	Hoke	Forsyth	Haywood	Catawba	Vance
Gates	Greene	Jones	Lee	Iredell	Henderson	Surry	Warren
Halifax	Carteret	New Hanover	Montgomery	Lincoln	Jackson	Watauga	Alamance
Hertford	Johnston	Onslow	Moore	Randolph	Macon	Wilkes	Caswell
Martin	Lenoir	Pender	Stanly	Rowan	Madison	Yadkin	Durham
Northampton	Pamlico	Robeson	Union	Alexander	Mcdowell	Burke	Orange
Pasquotank	Wayne	Sampson		Cleveland	Polk	Caldwell	Person
Perquimans				Gaston	Rutherford	Mitchell	Rockingham
Tyrrell				Mecklenburg	Swain	Yancey	Harnett
Washington					Transylvania		Wake

4.2 ESTIMATED QUANTITIES

The quantities indicated herein are annual estimates only and are provided for informational purposes based on the usage during the previous 9-year period. No maximum or minimum quantities are guaranteed. It shall be understood and agreed that the State may purchase more or less than the estimated quantities during the contract period. The State reserves the right to increase or decrease the quantities as needed. The State shall not be obligated to purchase more than its normal requirements. The State will be responsible only for items requested and received.

4.3 ADDITIONAL SAVINGS OFFERS/REBATES

This component is optional, but the State encourages Vendors to submit with their unpriced bid response any additional financial incentives/rebates, within the scope of this IFB, that will benefit the State. These additional incentives could include, but are not limited to additional discounts based on spend volumes, rebates, etc.

Example of Additional Discounts: Offering an additional percentage discount, off the current price differential that would be applied to all orders for the remainder of the contract term if and when the total orders against the contract exceed the

provided amount, at any point during the life of the contract. This would include orders from all entities utilizing this Contract will count toward the contract volume discount threshold.

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

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

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

The State has sole discretion in assigning value to Vendor’s proposed Additional Discount or Rebate offer in the final award decision.

All discounts, rebates, etc. offered by the awarded Vendor(s) shall be incorporated into the awarded contract and remain in effect for the entire contract period.

4.4 PRODUCT IDENTIFICATION

SUITABILITY FOR INTENDED USE

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

4.5 DELIVERY, TRANSPORTATION AND IDENTIFICATION

The Vendor shall deliver Free-On-Board (FOB) Destination to various locations within the awarded zone(s), including but not limited to state agencies, departments, institutions, universities, community colleges, and other eligible entities. Specific delivery locations will be provided in each purchase order.

1. Non-Emergency Deliveries

The Vendor shall complete standard deliveries within **2 consecutive calendar days** after receipt of purchase order.

- **For completion by Vendor:** Non-Emergency Deliveries shall be made within ____ consecutive calendar day(s) after receipt of purchase order.

2. Emergency Deliveries

For emergency deliveries, the Vendor shall ensure delivery within **24 hours** after receipt of order. Emergency deliveries are required when there is a sudden, urgent need to maintain critical operations across State entities.

- Emergency deliveries may involve accelerated delivery requirements, which include abnormal quantities due to high-priority or unforeseen events. Examples include situations where specific state facilities or colleges experience extraordinary demands, such as needing 48 truckloads within a single week.
- **For completion by Vendor bidding on Emergency Delivery Product Categories:** Emergency Deliveries shall be made within ____ hours after receipt of purchase order.

3. Abnormal Quantity and Accelerated Delivery Requirements

In cases where abnormal quantities are needed to meet extraordinary or emergency demands, vendors must be prepared to fulfill these orders promptly. "Abnormal Quantity" is defined as any fuel order substantially exceeding typical volumes, which may be required to maintain continuity in critical operations.

- The Vendor shall provide accelerated delivery of abnormal quantities as needed, leveraging all appropriate and available transportation methods to fulfill the order within specified timelines.
- Any additional charges related to abnormal quantity deliveries must be pre-approved in writing by the State Contract Manager. These charges, if applicable, should not exceed \$0.03 per gallon to cover increased transportation costs associated with urgent fuel sourcing from non-standard distribution points.

4. Transportation Methods

- **Bulk Transport:** For large deliveries (typically above 6,000 gallons), using tanker trucks that meet all safety and regulatory standards.
- **Tankwagon Delivery:** For smaller deliveries (between 500 and 5,999 gallons), suitable for locations with lower storage capacity or frequent resupply needs.
- **Emergency Delivery:** During emergencies, vendors must implement contingency plans for rapid mobilization. This includes using any suitable and available transport method to meet critical demand within the required timeframe.

5. Vendor Capacity and Third-Party Use

The Vendor warrants that it has the capacity to meet all State agency requirements within the stated delivery timelines. No additional charges will be permitted for third-party providers due to the Vendor's lack of capacity.

6. Promptness as a Factor in Award

Promptness and reliability in delivery performance may be evaluated as factors in contract award decisions.

4.6 ON-TIME DELIVERY RATE

The Vendor shall maintain an on-time delivery rate of at least 95% for fuel deliveries within the specified delivery terms. On-time delivery is defined as delivering the ordered fuel to the designated receiving point within the delivery time required in Section 4.5 DELIVERY, TRANSPORTATION AND IDENTIFICATION. The on-time delivery rate is calculated using the following formula:

Shipment Timing	Percent On-Time Shipment Rate
Section 4.6 Calendar Days	95%

$(\text{Number of On-Time Deliveries}) / (\text{Total Number of Deliveries}) \times 100\% = \text{On-Time Delivery Rate}$

Note: On-Time Shipment Rate will be rounded to the nearest whole percent.

NOTE: An order will not be considered delivered until all fuel specified in the order has been delivered to the State. This includes all deliveries required to complete a given order. Therefore, the "Total Number of Deliveries" is equal to the total number of delivery orders received, subtracting any orders that are cancelled by the State prior to delivery. If the Vendor makes multiple deliveries to fulfill a single order, the delivery is not considered complete until all fuel has been delivered. Once all fuel has been delivered, the order will be considered either "On-Time" or "Late." The Vendor shall not cancel or require that the State cancel any partial order or item considered "back-ordered" due to delivery delay unless requested to do so by the State, nor engage in any process or activity with an effect of inflating the actual On-Time Delivery Rate without prior written authorization from the State.

4.7 MINIMUM ORDERS

The minimum order quantity, which will qualify for prepaid FOB transportation with a fixed differential price plus OPIS pricing is 6,000 gallons for a single bulk transport order and 500 gallons for a single tank-wagon order. Buyers are also required to use this Contract for orders less than the minimum order quantity. However, in such cases, the order may be shipped prepaid, and actual transportation charges may be added to the invoice as a separate line item, in accordance with the set delivery fee structure specified in the Contract. The transportation costs charged for orders below the minimum order quantity shall be commensurate with the agreed-upon delivery fee schedule. No surcharge or handling charge shall be added or assessed for such orders. The Vendor must provide an estimated shipping amount to the Buyer upon request.

4.8 ORDER CANCELLATION SETTLEMENT

In the event that an agency orders product and the Vendor conveys product to the point of delivery within the stipulated delivery timeline, but the agency is unable to accept delivery due to no fault of the Vendor (such as limited receiving/storage capacity of the agency) or in the event that an entity orders product and the Vendor has taken steps to effect delivery, resulting in verifiable incurred costs, and the agency cancels such order, a cancellation settlement fee will be paid by the entity to the Vendor. The parties shall determine the cancellation settlement fee, in good faith and in a commercially reasonable manner.

4.9 HUB PARTICIPATION

Pursuant to North Carolina General Statute G.S. 143-48, it is State policy to encourage and promote the use of small, minority, physically handicapped, and women contractors in purchasing Goods and Services. As such, this IFB will serve to identify those Vendors that are minority owned or have a strategic plan to support the State’s Historically Underutilized Businesses program by meeting or exceeding the goal of 10% utilization of diverse firms as 1st or 2nd tier subcontractors. Vendor shall complete ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION.

4.10 QUALIFICATION AND EXPERIENCE

In its Response, Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State. Vendor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, citing experience with similar projects and the responsibilities to be assigned to each person.

To ensure the successful execution of this Contract and the delivery of high-quality fuels, Vendor must meet the following experience and qualification requirements. These criteria are based on best practices, industry standards, and the specific needs of the State of North Carolina.

A. Industry Experience

- **Minimum Experience:** Vendor must have a minimum of five (5) years of experience in the fuel supply industry, including experience with bulk fuel transportation, storage, and delivery.
- **Relevant Projects:** Vendor must provide a list of at least three (3) similar projects or contracts completed within the past five (5) years, demonstrating their capability to supply fuels at a similar scale and complexity.

B. Technical Expertise

- **Fuel Handling:** Vendor must demonstrate technical expertise in handling and transporting various types of fuels, including propane, diesel, gasohol, and gasoline. This includes knowledge of safety procedures, spill response, and fuel quality testing.
- **Certifications:** Vendor must have personnel with relevant certifications, such as HAZMAT certification for drivers and technicians involved in fuel handling and transportation.

C. Delivery Capabilities

- **Transportation Fleet:** Vendor must have a fleet of vehicles that are properly maintained, equipped with safety features, and suitable for the transportation of fuels. Vehicles must comply with DOT hazardous materials regulations.

- **Delivery Infrastructure:** Vendor must have the infrastructure and capacity to deliver fuels to various locations across North Carolina, including state agencies, departments, institutions, universities, and community colleges. This includes the ability to provide emergency deliveries.

D. Qualification Submission

- Vendor must submit evidence of their ability to meet the requirements within Section 5 Scope of Work and Specifications as part of their bid.
- Only vendors who meet these qualifications will be eligible to participate in the reverse auction process. The Contract will be awarded to the lowest qualified bidder(s), ensuring that all requirements and standards are met.

4.11 REFERENCES

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

4.12 SUSTAINIBILITY EFFORTS

According to G.S. 143-58.2, it is the policy of this State to encourage and promote the purchase of products with recycled content and to purchase items that are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost effective. The bid must describe how environmental requirements which relate to clear labeling of the environmental/sustainability attributes (e.g. environmental certifications, total and post-consumer recycled content, etc.) of products in the proposed product catalogs, demonstrating the ability to run usage reports that include information about each product’s environmental/sustainability attributes, packaging and recycling of spent products.

4.13 PRODUCT SAFETY LISTING

All manufactured items and/or fabricated assemblies subject to operation under pressure or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels, or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and Federal requirements relating to clean air and water pollution. Having the appropriate certification or safety label affixed to any device delivered pursuant to this solicitation, under the conditions described above, is a material condition of any contract awarded as a result of this solicitation. All costs for product and industry certifications and listings required to supply conforming products to the State as described in this IFB are the sole responsibility of the Vendor. The certification or safety label shall be affixed and be visible on the OUTSIDE of all products that require a certification or safety label.

All electrical materials, devices, appliances, and equipment shall be evaluated for safety and suitability for intended use in accordance with G.S. 66-25 Acceptable Listings as to Safety of Goods.

4.14 VENDOR’S REPRESENTATIONS

If Vendor’s bid results in an award, Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under the Contract. If any Services, deliverables, functions, or responsibilities not specifically described in this solicitation are required for Vendor’s proper performance, provision and delivery of the Service and deliverables under a resulting contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and/or other Deliverables.

4.15 FINANCIAL STABILITY

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

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

4.16 INSURANCE REQUIREMENTS MODIFICATION

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

- Contract value in excess of \$1,000,000.00.

4.17 LOBBYING ACTIVITY CERTIFICATION FOR FEDERAL GRANTS

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

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

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

4.18 SECRETARY OF STATE REGISTRATION

Upon notification of award, the selected Vendor(s) shall complete registration with the NC Secretary of State and shall furnish evidence of filing to the Procurement Lead. Failure to provide proof of registration will result in the removal as a selected Vendor(s) from the contract award. Note that any prolonged (longer than ten (10) business days) notification of evidence of filing may result in a disqualification for award. No purchase orders shall be issued prior to confirmation of completed registration with the Secretary of State.

A contract award under the above-referenced solicitation, and the resulting purchase orders, will produce repeated orders and transactions in North Carolina and will constitute “transacting business” in the State, which requires a certificate of authority from the North Carolina Secretary of State as provided in G.S. §55-15-01 (corporations) or §57D-7-01 (LLCs). Please go to: <https://www.sosnc.gov/> to register.

Vendor registered with the North Carolina Secretary of State: Yes No

5.0 SCOPE OF WORK AND SPECIFICATIONS

The purpose of this solicitation is to establish a Statewide Term Contract (STC) for the procurement of various types of fuels, as listed in below Categories. The resulting Contracts will serve the fuel needs of North Carolina state agencies, departments,

institutions, universities, community colleges, and other eligible entities across the state. The Contract(s) will be awarded to the lowest responsive and responsible Bidder(s), based on the total bid for each zone, within each category, under each lot.

Categories

- A. Category A – Propane.
- B. Category B - On-Road Diesel (ULSD).
- C. Category C - Off-Road Diesel (Dyed).
- D. Category D - Biodiesel
- E. Category E - Gasohol (E-10, E-85).
- F. Category F - Regular Conventional Non-Ethanol Unleaded Gasoline (87 Octane).
- G. Category G - Emergency Source Propane.
- H. Category H - Emergency Source Fuels (E-10, Ultra-Low Sulfur #2, Propane, Kerosene, Aviation Gasoline, Jet A Fuel).
- I. Category I – Aviation Fuels.

The Vendor shall provide and deliver fuels that meet the specified quality standards to various locations across North Carolina. The Vendor must ensure timely and accurate deliveries, compliance with environmental and safety regulations, and provide necessary documentation for each delivery.

The specifications and requirements outlined below have been evaluated and determined to be necessary for the State's needs. Vendors are requested to offer only comparable fuels that will provide the features and performance required.

The specifications and requirements below are drawn around products which the State has evaluated and determined to be necessary. Vendors are requested to offer only comparable fuels which will provide the features and performance needed and implied. Fuels provided to the State shall perform satisfactorily for the designated use and shall at least meet the criteria listed in this IFB per the categories referenced in Section 5.3. Fuels furnished by a Vendor shall be generally recognized within the fuel industry as commercially acceptable products. The State reserves the right to determine this recognition and the acceptability of the products proposed to be furnished under any and all awarded Contracts as a result of this IFB.

This solicitation applies only to fuels in the identified categories. Bids for fuels in other, related categories will not be accepted. The State will evaluate its needs for additional fuel categories and may issue additional solicitations in the future.

5.1 VENDOR RESPONSIBILITY

A. Transportation Requirements

- **FOB Destination:** The Vendor shall deliver Free-On-Board (FOB) Destination to any requested location within the award zone(s) with all transportation costs and fees included in the total bid price.
- **Permits and Licenses:** Vendors must obtain and maintain all necessary permits and licenses for transporting fuels. Copies of these permits and licenses must be provided to the State upon request. Required licenses and permits include, but are not limited to:
 - **Hazardous Materials Safety Permit (HMSP)** issued by the Federal Motor Carrier Safety Administration (FMCSA).
 - **Commercial Driver's License (CDL)** with Hazardous Materials (HAZMAT) Endorsement.
 - **State-specific fuel transportation permits** (if applicable).
 - **Environmental Protection Agency (EPA) ID Number** for handling hazardous materials.
 - **North Carolina Fuel Distribution Permit** issued by the North Carolina Department of Revenue.

- **Vehicle Standards:** All vehicles used for transporting fuels must be properly maintained, equipped with safety features, and suitable for the type of fuel being transported. Vehicles must comply with the DOT's hazardous materials regulations.
- **Driver Qualifications:** Drivers must be trained and certified in handling hazardous materials and must possess a valid Commercial Driver's License (CDL) with appropriate endorsements for transporting fuels.

Identification of Fuels

- **Labeling:** All fuel deliveries must be clearly labeled with the type of fuel, grade, and any other relevant information. Labels must be compliant with OSHA's Hazard Communication Standard (HCS) and the Globally Harmonized System (GHS) of Classification and Labeling of Chemicals. Each label should include:
 - Type of fuel (e.g., Propane, Diesel, Gasohol).
 - Grade of the fuel.
 - Batch number or identification code.
 - Date of delivery.
 - Safety warnings and handling instructions.
- **Documentation:** Each delivery must include a bill of lading, safety data sheet (SDS), and any other relevant documentation. The documentation must be readily available for inspection upon delivery and must include:
 - Name and address of the vendor and the purchaser.
 - Description and quantity of the fuel delivered.
 - Identification numbers and batch codes.
 - Delivery date and time.
 - Any special handling instructions.
- **Security Seals:** All transport containers must be sealed with tamper-evident security seals. The seals must be inspected upon delivery, and any signs of tampering must be reported immediately. Each seal should have a unique identification number recorded in the delivery documentation.

Delivery Procedures

- **Order Identification:** When an order is placed using a purchase order, the purchase order number shall be shown on all packages and shipping manifests to ensure proper identification and payment of invoices. If an order is placed without using a purchase order, such as via phone, the Buyer's name shall be shown on all packages. A complete packing list shall accompany each shipment. Vendors shall not ship any products until they have received an order.
- **Delivery Schedule:** Vendors must adhere to the delivery schedules specified in the Contract. Any delays or changes in the schedule must be communicated to the State as soon as possible.
- **Unloading Requirements:** Vendors must follow safe unloading procedures to prevent spills and accidents. Appropriate equipment must be used for transferring fuel from the transport vehicle to the storage tanks.
- **Spill Response:** Vendors must have a spill response plan in place and must be equipped to handle any spills or leaks during transportation and delivery. Immediate action must be taken to contain and clean up any spills.

Emergency Situations

- **Contingency Plans:** Vendors must have contingency plans for fuel delivery during emergencies, such as natural disasters or supply chain disruptions. These plans must ensure that fuel can be delivered to critical state facilities without interruption.

- **Communication:** Vendors must maintain open lines of communication with the State during emergencies and provide regular updates on the status of fuel deliveries.

B. Quality Assurance, Safety Programs and Compliance

- **Quality Control Program:** Vendor must have a robust quality control program in place to ensure that all fuels meet the specified standards and are free from contaminants. This includes regular testing and inspection of fuels.
- **Safety Program:** Vendor must have a comprehensive safety program that includes training for drivers and other personnel on handling of hazardous materials, emergency response procedures, and compliance with safety regulations.
- **Testing and Inspection:** All fuels must undergo regular testing and inspection to ensure compliance with specified standards.
- **Documentation:** Each delivery must include a bill of lading, safety data sheet (SDS), and any other relevant documentation. The documentation must be readily available for inspection upon delivery and must include the type of fuel, grade, batch number, date of delivery, and safety warnings.
- **Compliance:** Vendor must comply with all federal, state, and local environmental regulations. This includes adherence to OSHA standards, DOT regulations, and EPA guidelines.
- **Safety Measures:** Vendor must implement safety measures for handling, transporting, and storing fuels to prevent spills, contamination, and accidents. This includes having a spill response plan in place.

C. Documentation and Reporting

- **Documentation:** Vendor must provide complete and accurate documentation for all deliveries, including bills of lading, safety data sheets (SDS), and any required certifications.
- **Reporting:** Vendor must maintain accurate records of all deliveries, inspections, and any issues encountered. Regular reports must be submitted to the State as required, detailing delivery performance, fuel usage, and compliance with contract terms.

5.2 CUSTOMER SERVICES

Key principles and strategies to deliver customer service in the context of fuel procurement, shall be provided by the Vendor during the contract period. Information to include but not be limited to:

- **Prompt Response:** The Vendor must ensure timely responses to all inquiries, issues, and requests from the State. This includes acknowledging receipt of inquiries within one business day and providing a resolution or status update within three business days.
- **Product Knowledge and Expertise:** The Vendor must demonstrate comprehensive knowledge of all fuel types supplied under this Contract. Vendor representatives should be well-versed in the specifications, handling, and safety protocols associated with each fuel type.
- **Problem-Solving:** The Vendor must have effective problem-solving strategies in place to address any issues that may arise, including delivery discrepancies, quality concerns, or emergency fuel requirements. Vendors should have a dedicated customer service team to handle such issues promptly and efficiently.
- **Accuracy and Efficiency:** The Vendor must ensure that all orders are processed accurately and delivered efficiently. This includes verifying order details, ensuring compliance with specifications, and providing accurate billing and documentation.
- **Tracking and Status Updates:** The Vendor must provide regular tracking and status updates for all fuel deliveries. This includes real-time tracking of shipments and proactive communication about any potential delays or issues.
- **Feedback Collection:** The Vendor must establish a system for collecting feedback from the State regarding the quality of service and fuel products provided. This feedback should be used to continuously improve service delivery and address any areas of concern.

5.2.1 GEOGRAPHIC COVERAGE

Vendor must be capable of delivering the awarded fuel type(s) to any purchasing entity within the awarded zone, including urban, suburban, and rural areas. This encompasses deliveries to state agencies, departments, institutions, universities, and community colleges. Vendors must ensure timely and efficient deliveries to all specified locations, accommodating the logistical challenges of both densely populated and remote areas. Geographic coverage must also include the ability to provide expedited and emergency fuel deliveries as required, ensuring continuous and reliable fuel supply to all designated sites within the State.

5.3 SPECIFICATIONS

To ensure the procurement of high-quality fuels that meet the operational needs of North Carolina State agencies, departments, institutions, universities, and community colleges, the following specifications must be adhered to by the Vendor. These specifications are derived from industry standards, best practices, and the specific requirements outlined in our sourcing strategy document.

1. **Propane (LPG)**

- **Grade:** HD5 or higher.
- **Minimum Propane Content:** 90%.
- **Sulfur Content:** Not exceeding 15 ppm.
- **Standards:** Must meet ASTM D1835 standards.
- **Odorization:** Propane must contain an odorizing agent to ensure its positive identification during use.
- **Packaging:** Delivered in appropriate bulk containers or tanks.

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL ADDITIONAL REQUIREMENTS

- Deliveries shall be made when the tank level is lower than 50%.
- Tank level is monitored by the supplier with installed internet SmartLogix monitoring.
- Deliveries are scheduled by the Vendor as needed during facility business hours.

2. **On-Road Diesel (Ultra-Low Sulfur Diesel - ULSD)**

- **Cetane Rating:** Minimum 45.
- **Sulfur Content:** Not exceeding 15 ppm.
- **Standards:** Must meet ASTM D975 standards.
- **Filterability:** Water and sediment maximum 0.05%.
- **Packaging:** Delivered in appropriate bulk containers or tanks.
- **ULSD Grade 2 Fuel Oil:** Must comply with ASTM-D396, ASTM D975-14b, and ASTM D613-14 standards.
- **ULSD Grade 2 Fuel Oil Cetane Rating:** Minimum 40.

3. **Off-Road Diesel (ULSD, Dyed Red)**

- **Type:** Ultra-Low Sulfur Diesel (dyed red as per IRS regulations).
- **Cetane Rating:** Minimum 45.
- **Sulfur Content:** Not exceeding 15 ppm.

- **Standards:** Must meet ASTM D975 standards.
- **Packaging:** Delivered in appropriate bulk containers or tanks.

4. **Bio-Diesel (B-20) Specifications**

- **Composition:** Blend of 20% mono-alkyl esters of long-chain fatty acids derived from virgin vegetable oil blend stock and/or yellow grease blend stock conforming to ASTM D 6751-09 and 80% minimum ULSD fuel oil conforming to ASTM D 975.
- **Performance**
 - Appearance: ASTM D 4176 - Clear & Bright.
 - Acid Number: ASTM D 664 - 0.2 max.
 - Density @ 15°C: ASTM D 4052 – Report.
 - Viscosity @ 40°C: ASTM D 445 - 1.3 - 4.1.
 - Flashpoint: ASTM D 93 - Apr - Sep: 52 min., Oct - Mar: 38 min.
 - Cold Filter Plugging Point (CFPP): ASTM D 6371 - Must meet or exceed the following seasonal requirements:
 - **Winter** (November - March): -12°C (10.4°F) max.
 - **Spring/Fall** (April, October): -8°C (17.6°F) max.
 - **Summer** (May - September): -4°C (24.8°F) max.
 - Sulfur Content: ASTM D 2622 - 0.05 max.
 - Distillation Temperature: ASTM D 86 - Report various points.
 - Carbon Residue: ASTM D 524 - 0.35 max.
 - Cetane Number: ASTM D 613 - 40 min.
 - Ash Content: ASTM D 482 - 0.01 max.
 - Water and Sediment: ASTM D 2709 - 0.05 max.
 - Copper Corrosion: ASTM D 130 - No. 3 max.
- **Low Temperature Performance:** Must have a Cloud Point tested in accordance with ASTM D 2500 and meet specified requirements based on geographical and seasonal use.
- **Blending:** Product must be blended prior to delivery. Manifold blending at the time of delivery and blending in the receipt tank is not permitted.
- **Environmental Protection Agency (EPA) Registration:** B100 product must be EPA registered in accordance with 40 CFR Part 79.
- **Additional Requirements**
 - BQ9000 Produced Product.
 - 100 Second Maximum for Cold Soak Filtration Test Year-Round.
 - Feedstock: Neutral April through August, Only Soy September through March.
 - Quality Bio-Diesel Cold Weather Additive.
- **Exclusions:** No Beef Tallow-Based or Palm-Based B100 will be accepted.

5. **Gasohol**

- **Blend:** 90% unleaded gasoline and 10% ethanol.
- **Ethanol Standards:** Must meet ASTM D4806.
- **Gasoline Standards:** Must meet ASTM D4814 standards.
- **Packaging:** Delivered in appropriate bulk containers or tanks.

6. **Regular Conventional Non-Ethanol Unleaded Gasoline**

- **Standard:** ASTM D4814.
- **Minimum Octane Rating:** 87.
- **Packaging:** Delivered in appropriate bulk containers or tanks.

7. **Emergency Source Propane**

- **Grade:** HD5 or higher.
- **Minimum Propane Content:** 90%.
- **Sulfur Content:** Not exceeding 15 ppm.
- **Standards:** Must meet ASTM D1835 standards.
- **Odorization:** Propane must contain an odorizing agent to ensure its positive identification during use.
- **Packaging:** Delivered in appropriate bulk containers or tanks.

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL ADDITIONAL REQUIREMENTS

- Deliveries shall be made when the tank level is lower than 50%.
- Tank level is monitored by the supplier with installed internet SmartLogix monitoring.
- Deliveries are scheduled by the Vendor as needed during facility business hours.

8. **Emergency Source Fuels**

- **Types:** E-10, Ultra-Low Sulfur Diesel #2, Propane, Kerosene, Aviation Gasoline, Jet A Fuel.
- **Contingency Plans:** Vendors must have plans for fuel delivery during emergencies.
- **Standards:** Must meet applicable ASTM standards.
- **Packaging:** Delivered in appropriate bulk containers or tanks.

9. **Aviation Fuels**

- **Aviation (AV) Gasoline:** The AV offered must comply with current ASTM Specification D910-91a Standard Specification for Aviation Gasoline or latest revision and must have a minimum octane rating of 100 and classified as low lead.
- **Jet A Fuel:** The Jet A Fuel offered must comply with current ASTM Specification D-1655-91 b Standard Specification for Aviation Turbine Fuels and Military Standard Inhibitor, Icing, Fuel System S MIL-I-27686F or latest revision and must contain an additive to prevent bacterial growth in the fuel, i.e. Philijet-A55MBE or equal.
- Jet A Fuel shall be properly premixed prior to delivery of the final product.
- Product must comply with ASTM D910-91a.

- Product must comply with D-1655-91 b.
- Product must comply with MIL-I-27686F.
- Product must be certified to meet the required specifications.

5.4 OPTIONAL VALUE-ADDED SERVICES

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

5.5 DEVIATIONS

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

6.0 CONTRACT ADMINISTRATION

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

State Contract Administrator: Shayla Parker, shayla.parker@doa.nc.gov , 984 236 0233.

State Contract Manager: Austin Kiziah, austin.kiziah@doa.nc.gov, 984 236 0237.

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

6.1 CONTRACT MANAGER AND CUSTOMER SERVICE

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

Contract Manager Point of Contact	
Name:	Bridget Bailey
Office Phone #:	757-375-1525
Mobile Phone #:	757-375-1525
E-mail:	bbailey@jrpenergy.com

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

Customer Service Point of Contact	
Name:	Eileen Dunford
Office Phone #:	804-256-1133
Mobile Phone #:	804-363-1268
E-mail:	Edunford@jrpenenergy.com

6.2 ELECTRONIC PRODUCT CATALOG

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

6.2.1 Ordering Instructions Solution

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

6.3 CONTRACT BUSINESS REVIEW MEETINGS

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

Business Review meetings shall be scheduled semi-annually. Meetings shall be presented by the Vendor and be inclusive of the following:

1. Spend overview (State Agency Spend) FY Comparison.
 - a. Volume Discount.
2. Fuel Cost Savings: Analysis of cost savings from the OPIS-based pricing and any discounts applied to the fixed differential price compared to market prices. Product Accuracy Rate – Percent of equipment invoiced and shipped without post order correction.
3. Shipment Rate - % of orders filled in one shipment/service delivery.
4. On Time Delivery Rate – Percent of orders delivered within contract delivery term.
5. Sustainability Efforts and Results.
6. Additional Discounts Exercised.
7. Rebates.
8. Challenges.
9. Improvement Ideas.

6.4 CONTINUOUS IMPROVEMENT

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

6.5 PERIODIC QUARTERLY SPEND REPORTS

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

1. Sales Report (total cost) by State entity, to include agencies, community colleges, universities, school systems, local government entities.
2. Sales report must detail the fuel type and grade, quantity, unit of measure, OPIS price, fixed differential price, total contract price, any additional delivery charges (e.g., emergency or specialty packaging), ordering entity, delivery location (city), order date, shipment date, and delivery date. For non-routine deliveries, specify the delivery date and nature of the delivery..

Quarterly Sales Management Reports shall be sent to PCReports@doa.nc.gov with the Contract Manager copied at the above indicated e-mail address. Vendor shall include all issues identified by Vendor related to Vendor performance or to the State's usage of the contract.

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

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

By October 15th: Q1 Quarterly Management Report for July – September.

By January 15th: Q2 Quarterly Management Report for October – December.

By April 15th: Q3 Quarterly Management Report for January – March.

By July 15th: Q4 Quarterly Management Report for April – June.

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

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

6.6 QUALITY ACCEPTANCE INSPECTION AND ACCEPTANCE OF PRODUCT

Performance of the work and delivery of Goods and Services shall be conducted and completed at least in accordance with the contract requirements and recognized and customarily accepted industry practices. Performance shall be considered complete when the Goods and Services are approved as acceptable by the Buying Entity.

It is the responsibility of the receiving Buying Entity to inspect all delivered fuels upon delivery to ensure compliance with the Contract requirements and specifications. The inspection should verify that the fuels meet the specified quality standards, including but not limited to, grade, purity, and any other relevant specifications outlined in the Contract.

Acceptance of fuel products shall be based on the following criteria:

1. **Quality Compliance:** Fuel must meet the specified ASTM standards relevant to each type of fuel as outlined in Section 5.3 Specifications.
2. **Delivery Verification:** Delivery must match the ordered quantity and be made to the correct location as per the purchase order.
3. **Documentation:** Each delivery must be accompanied by a delivery ticket, bill of lading, and other required documentation

that verifies compliance with the order specifications.

4. **Inspection and Testing:** The State reserves the right to conduct random sampling and testing of the fuel to ensure compliance with the specified standards. Any fuel found to be non-compliant will be subject to rejection and the Vendor will be required to replace the non-compliant fuel at no additional cost to the State.
5. **Timely Notification:** The State shall notify the Vendor in writing within ten (10) calendar days following delivery if the goods are not acceptable. The notice shall specify in reasonable detail the reason(s) for non-acceptance.
6. **Resolution of Issues:** The Vendor must resolve any issues related to non-compliance or non-acceptance promptly and at no additional cost to the State.

Inspection Process

1. **Verification of Documentation:** Upon delivery, the receiving entity must verify that all accompanying documentation, including the bill of lading, safety data sheet (SDS), and any certifications, are accurate and complete.
2. **Sampling and Testing:** The receiving entity may take fuel samples for testing to ensure that the delivered fuel meets the specified quality standards. Testing should be done following industry-standard procedures.
3. **Visual Inspection:** A visual inspection should be conducted to check for any signs of contamination or impurities in the fuel.
4. **Quantity Check:** Verify that the delivered quantity matches the order specifications.

Acceptance Criteria

1. Fuels must meet the ASTM standards specified in the Contract.
2. Fuels must be free from contaminants and impurities.
3. Documentation must be accurate and complete.

Non-Compliance

1. If the delivered fuels do not meet the specified quality standards or if there are discrepancies in the documentation, the receiving entity must notify the Vendor immediately and may reject the delivery.
2. The Vendor is responsible for the removal and replacement of any non-compliant fuels at no additional cost to the State.

Acceptance by the State shall not be unreasonably withheld but may be conditioned or delayed as required for reasonable review, evaluation, installation, or testing, as applicable to the work or deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any specifications, acceptance criteria, or otherwise fail to conform to the contract, the State may exercise any and all rights hereunder, including, for Goods deliverables, such rights provided by the Uniform Commercial Code, as adopted in North Carolina.

6.7 INVOICES

Vendor shall invoice the Purchasing Agency. The standard format for invoicing shall be Single Invoices meaning that the Vendor shall provide the Purchasing Agency with an invoice for each order. Invoices shall include detailed line-item information to allow Purchasing Agency to verify pricing at point of receipt matches the correct price from the original date of order. At a minimum, the following fields shall be included on all invoices:

Vendor’s Billing Address, Customer Account Number, NC Contract Number, Order Date, Buyer’s Order Number, Service Descriptions, Price, Quantity, and Unit of Measure.

A. Invoiced Product Prices

Delivered products shall be invoiced at the established Oil Price Information Service (OPIS) rack rate based on the weekly OPIS report used to post the current fuel prices. If the weekly OPIS report is not published for any reason, the most recent available report will be used to determine the applicable daily prices. The invoiced price per gallon shall be the summation of the Vendor's differential price + the OPIS rack rate.

In order for user entities to verify the price per gallon charged, any applicable government levies/taxes should be invoiced as separate line items on invoices and not included in invoiced price per gallon.

B. Invoice Submission

- **Timing:** Vendors must submit invoices within 30 days of each delivery.
- **Format:** Invoices must be submitted in an electronic format, unless otherwise specified by the Agency.
- **Required Documentation:** Each invoice must be accompanied by the following documents:
 - Bill of Lading.
 - Safety Data Sheet (SDS).
 - Delivery receipt signed by an authorized Agency representative.
 - Any additional documentation required by the contract.

C. Invoice Details

- **Vendor Information:** Invoices must include the Vendor's name, address, and contact information.
- **Purchase Order Number:** Invoices must reference the correct purchase order number for each delivery.
- **Description of Goods:** Invoices must clearly describe the type and quantity of fuels delivered.
- **Base Price, Fixed Differential Price and Total Amount:** Invoices must list the base price (OPIS Price) and the fixed differential price for each type of fuel and the total amount due.
- **Delivery Date and Location:** Invoices must specify the delivery date and location for each shipment.

D. Payment Terms

- **Payment Schedule:** Payments will be processed within 30 days of receiving a correct and complete invoice, unless otherwise specified in the Contract.
- **Discrepancies:** Any discrepancies or issues with the invoice will be communicated to the Vendor within 10 days of receipt. Vendors must resolve any issues promptly to avoid payment delays.

E. Contact Information for Invoice Inquiries

- Vendors must provide contact information for invoice-related inquiries, including the name, phone number, and email address of the person responsible for handling billing questions.

F. Non-Acceptance of Incomplete Invoices

- Incomplete or incorrect invoices will not be processed for payment. Vendors must ensure all required information and documentation are included to avoid delays.

INVOICES MAY NOT BE PAID UNTIL AN INSPECTION HAS OCCURRED AND THE GOODS ACCEPTED.

6.8 DISPUTE RESOLUTION

During the performance of the Contract, the Parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State's Contract Manager for resolution. Any claims by the State shall be

submitted in writing to the Vendor’s Project Manager for resolution. The Parties shall agree to negotiate in good faith and use all reasonable efforts to resolve such dispute(s).

During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this contract. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.9 POST AWARD PRODUCT SUBSTITUTION, ADDITIONS, & REMOVALS

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

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

6.10 PRICE ADJUSTMENTS

Prices proposed by the Vendor shall be firm against any increase for two (2) years (initial contract term) from the effective date of the Contract.

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

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

6.11 CONTRACT CHANGES

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

6.12 TAXES

No taxes shall be included in any bid prices.

6.13 ATTACHMENTS

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

The remainder of this page is intentionally left blank.

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

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

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:
"BIDDER" AND "CONTRACTOR"
"PURCHASER" AND "OWNER"**

2. Federal Changes

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

3. Notification of Federal Participation

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

4. Conflict of Interest

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

5. Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee

of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

6. Disadvantaged Business Enterprises

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

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101. The NC Department of Transportation/Public Transportation Division’s overall goal for DBE participation is **4.31%**.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the {insert agency name} and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.]**

d. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

7. Civil Rights

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

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

(4) **Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other

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

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

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

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

(7) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq.*, and any amendments to these laws.

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

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

8. Clean Air Act

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

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

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

9. Clean Water

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

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

10. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. subsection 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994, FTA statutory requirements on environmental matters at 49 U.S.C. section 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq. and joint FHWA FTA regulations, "environmental Impact and Related procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision-making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623. As a result of enactment of 23 U.S.C. §§ 139 and 326 as well as amendments to 23 U.S.C. § 138, environmental decision-making requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 et seq. November 15, 2006 and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

11. Energy Conservation

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

12. Cargo Preference

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

13. Buy America

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

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

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

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

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

14. Fly America

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

15. Debarment and Suspensions

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

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

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

The certification in this clause is a material representation of fact relied upon by **(procuring agency)**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **(procuring agency)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

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

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

16. **Recycled Products**

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

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

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

Vehicular products:

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

Construction products:

- (a) Building insulation products, including the following items:
 - (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
 - (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
 - (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
 - (4) Spray-in-place insulation, including but not limited to foam-in- place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
- (c) Cement and concrete, including concrete products such as pipe and block containing:
 - (1) Coal fly ash;

- (2) Ground granulated blast furnace slag (GGBF);
- (3) Cenospheres; or
- (4) Silica fume from silicon and ferrosilicon metal production.
- (d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.
- (f) Shower and restroom dividers/partitions containing recovered plastic or steel.
- (g) (1) Consolidated latex paint used for covering graffiti; and

- (2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.
- (h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
- (i) Flowable fill containing coal fly ash and/or ferrous foundry sands.
- (j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.
- (k) Modular threshold ramps containing recovered steel, rubber, or aluminum.
- (l) Nonpressure pipe containing recovered steel, plastic, or cement.
- (m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

Transportation products:

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

Miscellaneous products:

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

Park and recreation products:

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

Landscaping products:

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.

- (b) Compost made from yard trimmings, leaves, grass clippings, and/ or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.
- (c) Garden and soaker hoses containing recovered plastic or rubber.
- (d) Lawn and garden edging containing recovered plastic or rubber.
- (e) Plastic lumber landscaping timbers and posts containing recovered materials.

Non-paper office products:

- (a) Office recycling containers and office waste receptacles.
- (b) Plastic desktop accessories.
- (c) Toner cartridges.
- (d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
- (e) Plastic trash bags.
- (f) Printer ribbons.
- (g) Plastic envelopes.
- (h) Plastic clipboards containing recovered plastic.
- (i) Plastic file folders containing recovered plastic.
- (j) Plastic clip portfolios containing recovered plastic.
- (k) Plastic presentation folders containing recovered plastic.
- (l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

17. Geographic Preference

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

18. Termination or Cancellation of Contract

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

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

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

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

19. Breach of Contract

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

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

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

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

20. Resolution of Disputes

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

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

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

21. Protest Procedures

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

22. No Federal Government Obligations to Third Parties

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

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

23. False or Fraudulent Statements or Claims

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

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement,

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

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

24. Access to Records and Reports

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

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

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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

25. National Intelligent Transportation Systems Architecture and Standards

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

(applicable to ITS projects)

26. State and Local Disclaimer

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

27. Incorporation of Federal Transit Administration (FTA) Terms

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

28. Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Purchaser/Owner of this Purchase Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

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

29. Seat Belt Usage

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

30. Exclusionary or Discriminatory Specifications

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

31. Metric System

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

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

(a) Definitions. As used in this clause—

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

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

Covered telecommunications equipment or services means—

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

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

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

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

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

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

(To be submitted with all bids exceeding \$250,000.)

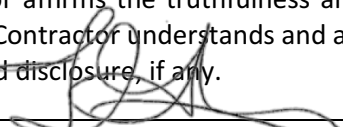
The undersigned James River Solutions certifies, to the best of his or her knowledge and belief, that:
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (PL 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$250,000 for each such failure.

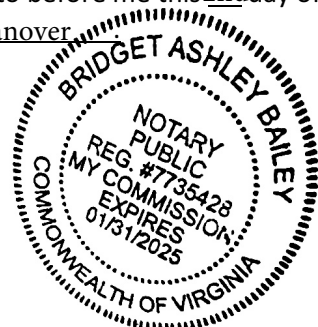
[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]

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

1/2/25
Date


Signature of Contractor's Authorized Official
Tracy Little - Managing Partner
Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this 2nd day of Jan., 20 25 in the State of Virginia; and the County of Hanover



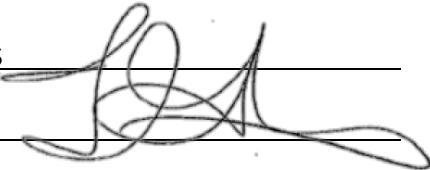
Notary Public Bridget Bailey
My Appointment Expires 1/31/25

ATTACHMENT B

**CERTIFICATE OF COMPLIANCE
WITH BUY AMERICA REQUIREMENTS**

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

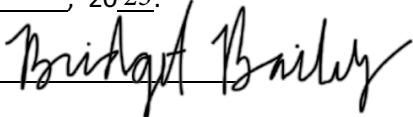
The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

DATE 1/2/25
SIGNATURE 
COMPANY James River Solutions
NAME Tracy Little
TITLE Managing Partner

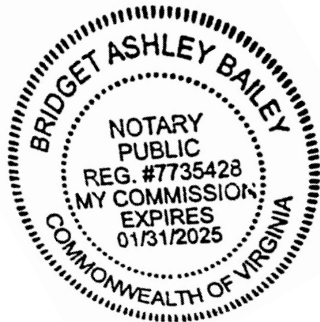
State of Virginia

County of Hanover

Subscribed and sworn to before me this 2nd day of January, 2025.

Notary Public 

My Appointment Expires 1/31/25



ATTACHMENT C

**CERTIFICATE OF NON-COMPLIANCE
WITH BUY AMERICA REQUIREMENTS**

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

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

DATE 1/2/25
SIGNATURE [Signature]
COMPANY James River Solutions
NAME Tracy Little
TITLE Managing Partner

State of Virginia

County of Hanover

Subscribed and sworn to before me this 2nd day of January, 20 25

Notary Public [Signature]
My Appointment Expires 1/31/25



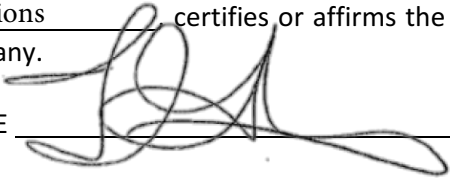
ATTACHMENT D

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

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

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

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

SIGNATURE 

TITLE Managing Partner

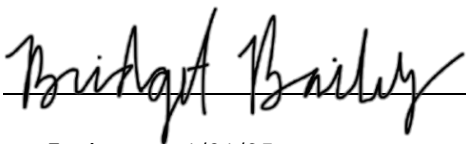
COMPANY James River Solutions

DATE 1/2/25

State of Virginia

County of Hanover

Subscribed and sworn to before me this 2nd day of January, 20 25.

Notary Public 

My Appointment Expires 1/31/25



ATTACHMENT E

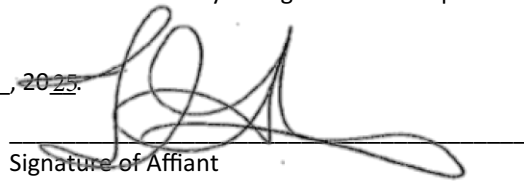
STATE OF NORTH CAROLINA
COUNTY OF _____

AFFIDAVID OF COMPLIANCE WITH N.C. E-VERIFY STATUTES
(To be submitted with all bids)

I, Tracy Little (hereinafter the "Affiant"), duly authorized by and on behalf of James River Solutions (hereinafter the "Employer") after being first duly sworn deposes and says as follows:

1. I am the Managing Partner (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that 'E-Verify' means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3. Employer employ 25 or more employees, and is in compliance with the provisions of N.C. General Statute SS64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of one (1) year.
4. Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. General Statute SS64-26.
5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This 2nd day of January, 2025.



Signature of Affiant

Tracy Little - Managing Partner

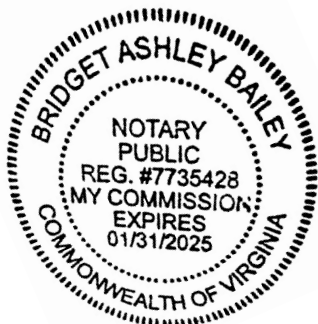
Printed Name and Title

State of Virginia

County of Hanover

Subscribed and sworn to before me this 2nd day of January, 2025.

Notary Public 
My Appointment Expires 1/31/25





IMPORTANT

The following document is included for your review and examination.

Electronic acceptance prior to placing your bid will be required.

EBRIDGE BUSINESS SOLUTIONS, LLC SUPPLIER TERMS AND CONDITIONS

READ THIS AGREEMENT ("AGREEMENT") CAREFULLY BEFORE SELECTING "ACCEPT" OR "DECLINE" BELOW. BY SELECTING THE "ACCEPT" BUTTON, YOU WILL BE PERMITTED TO UTILIZE THE EBRIDGE BUSINESS SOLUTIONS, LLC ("EBRIDGE") INTERNET-BASED STRATEGIC SOURCING SOLUTION ("THE SOLUTION") FOR THE PURPOSE OF PARTICIPATING IN THIS ONE-TIME, ONLINE BIDDING EVENT. YOU WILL BE ALLOWED TO RECEIVE REQUESTS FOR INFORMATION AND QUOTATIONS AND TO SUBMIT BIDS AND PROPOSALS NECESSARY IN PARTICIPATING IN THE ONLINE BIDDING EVENT. BY SELECTING THE "DECLINE" BUTTON BELOW, YOU WILL BE DENIED ACCESS TO THE SOLUTION.

EBRIDGE BUSINESS SOLUTIONS, LLC ("eBridge") does not verify or validate any information provided or representations made by users of the Solution, and makes no warranty of any kind to you concerning any buyer offerings using the Solution. You acknowledge eBridge, its employees, agents, officers and members make no warranty of any kind, either express or implied, regarding the quality, accuracy or validity of any data and information available on the Solution, or residing or passing through its network, other than information and data that is provided directly to you from eBridge.

You further acknowledge any agreement entered into by you as the supplier of goods or services from a participating buyer is an agreement solely with such buyer, and eBridge is in no way a party to or responsible for the performance of such agreement. Therefore:

1) EBRIDGE DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO ANY TRANSACTION ENTERED INTO BETWEEN A PARTICIPATING PERSON OR ENTITY AND A SUPPLIER, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; AND 2) EBRIDGE FURTHER DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, CONCERNING INFORMATION SUPPLIED, OR REPRESENTATIONS MADE, BY ANY BUYER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION RELATING TO PRODUCT SUITABILITY, SPECIFICATIONS, OR REQUESTED AVAILABILITY, OR THE TRUTHFULNESS OR ACCURACY OF ANY OTHER INFORMATION OR REPRESENTATION MADE OR SUPPLIED BY A BUYER OR ANY OTHER SUPPLIER INVOLVED IN THIS AGREEMENT.

BY SELECTING THE "ACCEPT" BUTTON BELOW, AND BY SUBSEQUENTLY USING THE SOLUTION, YOU AGREE TO COMPLY WITH ALL TERMS AND CONDITIONS SET FORTH BELOW AND WITH ALL INSTRUCTIONS FOR USE POSTED ON THE SOLUTION.

- 1. Utilization.** You are granted a one-time, non-transferable, non-exclusive right to access the Solution through eBridge's website through the use of a password(s) and/or access code(s). Any subsequent rights to access the Solution will require you to accept a new Agreement eBridge reserves the right to terminate your access to the Solution or any or all of its services at any time, if eBridge shall determine, in its sole discretion, you have violated any term(s) of this Agreement with respect to your access to and use of the Solution. In the event of such termination eBridge will notify you immediately.



2. Responsibilities of the Parties. Subject to the terms and conditions of this Agreement, eBridge will make available to you electronic access and use of the Solution, for you to participate in a one-time, online bidding event. eBridge will also provide such other assistance in the way of customer support and service as set forth in this Agreement. It is solely your responsibility when using the Solution to comply with all applicable local, state and federal statutes, ordinances, regulations, and policies governing the sales of goods or services by your company. eBridge shall have no responsibility for ensuring sales of goods or services using this system will comply with such laws, ordinances, regulations, or policies. You, the supplier, in using the Solution, have the responsibility for the bid including, but not limited to, the following:

- Accepting the terms of use contained in the bid documents in advance
- Preparing and assuring the completeness of any bids, quotes, or proposals
- Submitting any bids, quotes or proposals electronically within established deadlines
- Maintaining with the buyer, the security and integrity of the sealed or open bid procurement process
- Participating in any pre-bid conference(s) and tutorial(s) for suppliers prior to an electronic event
- Compliance with all applicable legal requirements
- Establishing and adhering to the terms and conditions of buyer contracts
- Assuring proper authorization to enter into a contract and the proper administration of any resulting contract

You also acknowledge that eBridge's role for procurement activities will include the following:

- Clarifying buyer needs and specifications to the supplier
- Assisting in the completion of comprehensive bid documents
- Hosting telephone tutorials with all suppliers on utilization of the electronic bid process
- Participating in any pre-bid conference(s)
- Hosting the auction event and providing support during the event
- Publishing appropriate results to the users as well as obtaining feedback from participants

3. Conduit Services Only. The Solution provides an Internet conduit through which you may communicate the availability of your goods and services to potential buyers, potential buyers may communicate their procurement needs to you and you may respond to requests for quotations, bids or proposals in online bidding events. You will be entitled only to respond to requests of potential buyers for quotations, bids or proposals if you have accepted the terms and conditions of this Agreement. eBridge makes no representation or warranty of any kind concerning the reputation, reliability or any other matter concerning participating buyers. You must conduct your own inquiries concerning the qualifications and reputation of buyers, and must look only to the buyers with whom you choose to transact business for performance of any agreements with them.

4. Buyer Representations and Warranties. eBridge does not verify or validate the information provided by or any representations or warranties made by buyers on the Solution, and makes no representation or warranty of any kind to you concerning any buyer using the Solution. You shall look solely to the buyer with respect to any buyer-related information or representations and warranties and shall indemnify and hold eBridge harmless from and against any contract, damages or liability that may result from any buyer-related information or representations and warranties.

5. Coded Access. The Solution is available only to persons and entities who have read and agreed to the terms of this Agreement and who have been assigned access code(s) and/or password(s). You agree not to divulge your access codes or passwords to any other person or entity. If you allow either your access code or password to fall into the hands of an unauthorized person, eBridge has no way of detecting unauthorized use of such codes or passwords and is not responsible for such unauthorized use of the Solution. YOU MUST SAFEGUARD THE PASSWORDS AND ACCESS CODES. Unauthorized users of the Solution may be subject to both civil and criminal prosecution under state and federal law.

6. Availability and Operation of the Solution. While every effort will be made to keep the Solution operating during all scheduled hours of operation, no guarantee of uninterrupted operation can be given. You agree the services provided on the



Solution are provided as is and neither you nor your business or agency will have any claim against eBridge as a result of any non-availability of the Solution at a particular time(s) or any failure of the Solution to operate as intended.

7. **Sole Remedy.** If you are dissatisfied with the functionality of the Solution or the services eBridge provides, your sole remedy is to cease using the Solution and/or services. YOU AGREE YOU HAVE, AND WILL HAVE, NO CLAIM OR RIGHT OF ACTION OF ANY KIND AGAINST eBridge RELATED TO YOUR USE OF THE SOLUTION. Without limitation of the foregoing, you waive any right you may have to claim or recover any special, incidental, exemplary, punitive, consequential or other damages (including but not limited to lost profits and business interruption).
8. **Virus.** eBridge shall not be liable for any harm that may be caused by the inadvertent transmission of any computer virus, worm, time bomb, logic bomb, or such other computer program transmitted through the Solution.
9. **Information You Provide.** You agree and warrant that any information you provide about yourself or your organization or your agents when registering to use the Solution or subsequent to registration, is accurate, current and complete and you will maintain and update that information to ensure that it remains true, accurate and complete. If eBridge suffers any claim or incurs any liability as a result of information entered into the Solution by users of your account, you and your agency or business will indemnify eBridge against such claim or liability including costs and attorney fees incurred in defending against it.
10. **Security.** eBridge uses industry-standard security measures to safeguard any information you may provide to us on our website. You, your organization and/or your agents are responsible for managing your internal security by safeguarding password(s) and establishing your own internal security procedures, as you would for paper-based procurements, to assure the proper use of the Solution. In the event of any compromise in the security of the Solution, you shall immediately report the same to eBridge and a new password will be assigned for your use. However, perfect security does not exist on the Internet, and eBridge does not and cannot guarantee that information will remain secure.
11. **Fees.** The design, maintenance and operation of the Solution require substantial costs and investment incurred by eBridge. Thus, a transaction fee will be charged to the awarded supplier. Said fee will be assessed to the awarded supplier at the rate stated in the Electronic Bid Event Form. All fees are to be paid to eBridge by the awarded supplier(s) once delivery is made to the Buyer(s) and the awarded supplier(s) is paid by the Buyer(s). Payment will be made on monthly transactions based upon actual purchases made during the month. This agreement is binding on all renewable and/or evergreen/roll-over contracts until and unless such time Buyer re-bids same in a manner consistent with acceptable procurement procedures.

Supplier(s) will ensure this transaction fee is included in every bid supplier submits before or during an auction. You further acknowledge any payment made by a Buyer with respect to a sale in which you were the awarded supplier, whether or not such payment is made directly to you or a third party, will cause you to be immediately liable to eBridge for the fee. Because these fees are expected to be INCLUDED in your pricing, these fees shall not be delineated in your invoicing to the Buyer.

Supplier(s) is obligated to pay the \$0.015 per gallon fee to eBridge for every gallon purchased by any mandatory agency, non-mandatory agency, or other entity that buys fuel from the resultant Contract(s) based upon the results of the reverse auction from this IFB and is obligated to report monthly usage to eBridge.

Any and all subsequent or additional orders, including but not limited to, any additional non-mandatory or entities that ride/bridge or buy from the contract and/or pricing that results from this bid is subject to these terms and conditions in their entirety.

12. **Disclosures.** You acknowledge by using the Solution, you agree to provide to eBridge accurate and complete information regarding: (a) any agreement entered into by you with a participating buyer through any online bidding event conducted through the Solution, (b) the final price agreed upon between you and the participating buyer with respect to any product or service sold to such buyer, and (c) the date payment (whether a payment in full or a partial or installment payment) is delivered to you by any buyer pursuant to any agreement entered into by you with a participating buyer through any online



bidding event conducted on the Solution or through the Solution. You are to provide this information to eBridge immediately upon becoming aware of such information. eBridge relies upon your delivery of such information for the calculation and payment of its fees as set forth in Section 11.

- 13. Privacy Policy.** eBridge shall have the right to monitor the Solution electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other government request, to operate its service properly, or to protect itself or its users. eBridge reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in eBridge's sole discretion, are unacceptable or in violation of this Agreement.

The information eBridge receives is determined by your activities when using the Solution. If you use the Solution to read or download information, eBridge collects and stores the following information about you: the name of the domain and host through which you access the Internet and the date and time you access the Solution. eBridge uses this information to measure the number of visitors to different sections of the Solution, so that eBridge can make the Solution more useful to visitors. If you actively participate in using or providing any of the services offered through the Solution, we collect and store the personally identifiable information needed to facilitate this participation (typically your name, agency or company name, mailing address, email address and telephone).

If you wish to use a link to another website or to do business with another user of the Solution, you may be asked by the other user to provide certain confidential information. eBridge shall not be responsible for any loss or damage of any kind, nature or amount incurred as a result of any such disclosure to another user through the Solution. You may choose to send personally-identifying information to other websites you have linked to through the Solution. eBridge does not control the collection or use of this information, and makes no representations or warranties about the privacy or other policies of any other websites.

- 14. Reselling or Transfer.** You agree not to sell, transfer, or assign your right to use the Solution to anyone, and you will not allow your access code or password to be used by any other agency or unauthorized person. If the Solution is used by another person using your access code or password, you will be responsible for and shall indemnify and hold eBridge harmless from and against any contract, damages or liability that may result from the use of your access code or password.
- 15. Access to Internet.** You agree that in order to use the Solution you must: (a) provide and pay for your own access to the Internet, and (b) provide and pay for all equipment necessary for you to make the connection to the Internet.
- 16. Interference with Others.** You agree not to use the Solution in a manner that would restrict or inhibit any other party's use of such services.
- 17. Links to Other Websites.** The Solution may link you to other sites on the Internet. These links are provided for your convenience but the websites to which the links connect are not under eBridge's supervision or control. You acknowledge and agree that the linking of the Solution to other websites does not constitute any endorsement of such websites by eBridge, and eBridge shall not be responsible for the legality, accuracy or any other aspect of the operation or content of any websites to which links are provided.
- 18. Copyright - How You May Use the Content of the Solution.** The content of the Solution (the "Content") is protected by intellectual property laws of both the United States and foreign jurisdictions. You may download, use, and copy the materials found on the Solution for your internal business use only, provided that all copies of the Content must bear any copyright, trademark, or other proprietary notice located on the Solution which pertains to the material being copied. The Content may not be republished or reprinted in whole or in part. Except as authorized in this paragraph, you are not granted a license under any copyright, trademark, patent, or other intellectual property right in the material or the services, processes, or technology described therein. All such rights are retained by eBridge and/or any third party owner of such rights. You may not sell or modify the Content or reproduce, display, publicly perform, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use of the Content on any other website or in a networked computer environment for any purpose is prohibited. None of the Content, including any software, may be reverse



engineered, disassembled, decompiled, reproduced, transcribed, stored in a retrieval system, translated into any language or computer language, retransmitted in any form or by any means, resold, or redistributed without the prior written consent of eBridge, except as described herein. Nothing in this paragraph prohibits you from printing, using or reproducing any records or reports of transactions using the Solution.

- 19. Framed Links.** You may not create framed links to the Solution without the prior written consent of eBridge.
- 20. Modification.** eBridge, in its sole discretion, has the right to modify this Agreement at any time. However, any such modification shall not affect the terms of any online bidding events already completed or in process. Any modification is effective upon either posting notice of such modification on eBridge's website or upon notice by mail. Your continued use of the Solution following notice of any modification to this Agreement shall be conclusively deemed an acceptance of all such modifications.
- 21. Non-Circumvention.** You agree you will not, directly or indirectly, take any action which circumvents or attempts to circumvent the intent or purpose of this Agreement. Further, you agree that once you electronically viewed or received a specific request for quotations from a buyer, you will not, directly or indirectly, enter into any agreement related to your quotations for this specific event with such buyer outside the Solution to include paper bids or verbal negotiation which would result in your failure to pay to eBridge the fee(s) set out in Section 11 hereof. You agree to maintain confidentiality between the buyer, you, your representatives, your company and its agents and suppliers and eBridge regarding the submission of quotations and subsequent pricing before and during the auction event.
- 22. Governing Law.** This Agreement and the rights of the parties to this Agreement shall be governed by and interpreted in accordance with the laws of the state in which the Buyer resides, without regard to or application of its conflict of laws principles.
- 23. Partial Enforceability.** If any provision of this Agreement, or the application of any provision to any person, entity or circumstance shall be held invalid, illegal or unenforceable, then the remainder of this Agreement, or the application of that provision to persons, entities or circumstances other than those with respect to which it is held invalid, illegal or unenforceable, shall not be affected thereby.
- 24. Entire Agreement.** This Agreement represents the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements, negotiations, correspondence, undertakings and communications between such parties representing such subject matter.
- 25. No Consequential Damages.** Except as prohibited by law, each party hereto waives any right it may have to claim or recover any special, exemplary, punitive or consequential (including business interruption), or any damages other than, or in addition to, actual damages.
- 26. Headings.** The headings in this Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement.