

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 8, 2009

SUBJECT: Solar Hot Water at the Detention Center
Grant Application for Renewable Energy Projects

ATTACHMENTS: Yes

1. RFP from State Energy Office

SUMMARY OF REQUEST:

The North Carolina State Energy Office has released a Request for Proposals (RFP) for Renewable Energy Projects. This RFP is part of the American Recovery and Reinvestment Act (ARRA) and was issued on August 21, 2009. The application is due September 10, 2009. The application time frame is aggressive. However, with the previous efforts by Henderson County Board of Commissioners to establish an energy policy and plan and over a year of implementation by staff, we are prepared to submit a RFP for a high priority project with total financing provided by the grant and the resulting savings in energy expenses.

The project is for installation of solar hot water at the Detention Center. Importantly, the Detention Center by a large margin is the biggest user of hot water of all County facilities. Furthermore, solar hot water has the most potential energy savings of all solar applications and arguably any renewable energy project. The transfer of energy use from natural gas to solar thermal is significant as well as the resulting cost savings. The savings are more than enough to pay any debt service from the Capital costs to install the solar system. This is the case even without a successful grant application. The addition of grant funding could either reduce the length of the debt term or amount of debt payment.

Another factor increasing the affordability of the debt is the ability for the system to be purchased by a private taxpaying organization and sell the BTUs from the solar system back to the County under a Solar Energy Purchase Agreement (SEPA). The cost of the BTUs from the private company reflect cost savings from the energy savings and tax credits they receive. Also, they can further reduce costs by contracting with a power company to assist in meeting the power company's Renewable Energy and Energy Efficiency Portfolio Standards. These Standards require power companies to invest in alternative energy. The energy savings, tax credits and power company contract generate a BTU cost significantly less than the cost from the natural gas provider.

The grant application is currently being developed and will follow under separate cover. The project is tentatively estimated to cost \$300,000 to \$400,000 and the grant will provide from 25% to 50% of the funding. The complete application and final details will be available prior to the Board Meeting.

Subject: Solar Hot Water at the 1995 Courthouse / Detention Center
September, 8, 2009
Page 2

Staff solicited three solar vendors for this RFP in the very limited time available. Understandably, two of the vendors were not responsive. Fortunately, FLS Energy has responded to the request to partner with the County on the grant application and has the necessary experience, expertise and availability to meet the short deadline. FLS Energy (www.flseenergy.com) is a regional provider of solar systems located in Asheville, NC. They are currently installing a system in the Detention Center in Knox County, Tennessee and have completed a system at the Kanuga Conference Center in Henderson County. Staff from the Sheriff Department and Engineering Department have toured the Kanuga Conference Center system and discussed the SEPA arrangement with Kanuga Staff. Other projects are the Proximity Hotel in Greensboro, NC, the Hilton Asheville and Mars Hill College.

BOARD ACTION REQUESTED:

Approve the ARRA grant application from the NC State Energy Office for a Solar Hot Water System at the Henderson County Detention Center.

Suggested Motion(s):

I move that the Board approve the ARRA grant application from the NC State Energy Office for a Solar Hot Water System at the Henderson County Detention Center.

Solicitation (IFB, RFP, RFQ) No. _____

Bidder/Offeror: _____

**THIS PAGE IS TO BE FILLED OUT AND RETURNED WITH YOUR BID. FAILURE TO DO SO
MAY SUBJECT YOUR BID TO REJECTION.**

ATTENTION

Federal Employer Identification Number or alternate identification number
(e.g., Social Security Number) is used for internal processing, including bid tabulation.

Enter ID number here: _____

Pursuant to N.C.G.S. 132-1.10(b) this identification number shall not be released to the public.

This page will be removed and shredded, or otherwise kept confidential,
before the procurement file is made available for public inspection.

**STATE OF NORTH CAROLINA
REQUEST FOR PROPOSALS**

RFP #200900845

TITLE: Renewable Energy Projects

USING AGENCY: State Energy Office

ISSUE DATE: August 21, 2009

ISSUING AGENCY: Department of Administration

Sealed Proposals subject to the conditions made a part hereof will be received until **2:00 p.m. September 10, 2009**, for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS AS SHOWN BELOW:

<u>DELIVERED BY US POSTAL SERVICE (REGULAR/STANDARD MAIL ONLY)</u>	<u>DELIVERED BY ANY OTHER MEANS/SPECIAL DELIVERY/OVERNIGHT (BY ANY OTHER CARRIER)</u>
RFP NO. _____ NC DEPARTMENT OF ADMINISTRATION DIVISION OF PURCHASE AND CONTRACT 1305 MAIL SERVICE CENTER RALEIGH NC 27699-1305	RFP NO. _____ NC DEPARTMENT OF ADMINISTRATION DIVISION OF PURCHASE AND CONTRACT 116 WEST JONES STREET Room 4062 4 th Flr. RALEIGH NC 27603-8002

*******SPECIAL NOTE – PLEASE READ*******

The US Postal Service DOES NOT deliver any mail (US Postal Express Mail, Certified, Priority, Overnight, etc.) to our physical address of 116 West Jones Street.

IMPORTANT NOTE: Indicate firm name and RFP number on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Bids submitted via telegraph, facsimile (FAX) machine, telephone, and electronic means, including but not limited to e-mail, in response to this Request for Proposals will not be acceptable.

Direct all inquiries concerning this RFP to:

Mildred Christmas
Division of Purchase and Contract
Administration Building, 4th Floor
116 W. Jones St.
<http://www.ncpandc.gov>
Raleigh, NC 27603
919-807-4525
919-807-4509 (FAX)
mildred.christmas@doa.nc.gov

NOTE: Questions concerning the specifications in this Request for Proposals will be received until **September 1, 2009 at 1:00 pm**. A summary of all questions and answers will be posted on the Internet as an addendum, located under the RFP # being modified. **It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.**

<http://www.pandc.nc.gov/>

Within two days after notification of award of a contract, the vendor must register in NC E-Procurement @ Your Service (<http://vendor.ncgov.com>).

THE PROCUREMENT PROCESS

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

1. Request for Proposals (RFP) is posted on the internet via the State's Interactive Purchasing System.
2. A deadline for written questions is set for **September 1, 2009 at 1:00 pm**. (See cover sheet of this RFP for details.)
3. Proposals in one (1) original and two (2) copies will be received from each offeror in a sealed envelope or package. Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.
4. All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.
5. At that date and time the package containing the proposals from each responding firm will be opened publicly and the name of the offeror and cost(s) offered will be announced. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of an offeror's pricing position.
6. At their option, the evaluators may request oral presentations or discussion with any or all offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.
7. Proposals will be evaluated according to completeness, content, experience with similar projects, ability of the offeror and its staff, and cost. Award of a contract to one offeror does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous to the State.

In addition to any other evaluation criteria identified in the State agency's solicitation document, the agency shall, for purposes of evaluating proposed or actual contract performance outside of the United States, consider the following factors to ensure that any award will be in the best interest of the State:

- Total cost to the State
- Level of quality provided by the vendor
- Process capability across multiple jurisdictions
- Protection of the State's information and intellectual property
- Availability of pertinent skills
- Ability to understand the State's business requirements and internal operational culture
- Risk factors such as the security of the State's information technology
- Relations with citizens and employees
- Contract enforcement jurisdictional issues

8. Offerors are cautioned that this is a request for offers, not a request to contract, and the State reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the State.

INTRODUCTION

This competitive solicitation will make grants available for commercial, industrial, public, and nonprofit facilities in North Carolina to install solar, wind, hydropower, and biomass technologies that produce energy using commercially available technologies.

BACKGROUND

American Recovery and Reinvestment Act

The State Energy Office (SEO) offers this solicitation as part of the federal American Recovery and Reinvestment Act (ARRA) to encourage energy conservation and economic investment in energy technologies. ARRA and U.S. Department of Energy guidelines also require that projects adhere to a number of reporting and project implementation standards that are outlined below.

Projects under this Funding Opportunity Announcement (FOA) will be funded with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously. Accordingly, special consideration will be given to projects that promote and enhance the objectives of the Act, especially job creation and preservation, and economic recovery, in an expeditious manner.

Be advised that special terms and conditions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Access to records by Inspectors General and the Government Accountability Office;
- Prohibition on use of funds for gambling establishments, aquariums, zoos, golf courses or swimming pools;
- Ensuring that iron, steel and manufactured goods are produced in the United States;
- Ensuring wage rates are comparable to those prevailing on projects of a similar character Davis-Bacon Act;
- Protecting whistleblowers and requiring prompt referral of evidence of a false claim to an appropriate inspector general; and
- Certification and Registration.

These special terms and conditions will be based on provisions included in Titles XV and XVI of the Act. The currently available Special Provisions are located at: http://management.energy.gov/business_doe/business_forms.htm and are also noted on page 14 and 15 of this RFP.

The Office of Management and Budget (OMB) has issued Initial Implementing Guidance for the Recovery Act. See [M-09-10, Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009](#). OMB will be issuing additional guidance concerning the Act in the near future. Applicants should consult the DOE website, www.energy.gov, the OMB website <http://www.whitehouse.gov/omb/>, and the Recovery website, www.recovery.gov regularly to keep abreast of guidance and information as it evolves.

Recipients of funding appropriated by the Act shall comply with requirements of applicable Federal, State, and local laws, regulations, and DOE policy and guidance. Recipients shall flow down the requirements of applicable Federal, State and local laws, regulations, DOE policy and guidance to subrecipients at any tier to the extent necessary to ensure the recipient's compliance with the requirements.

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related OMB Guidance. Applicants for projects funded by sources other than the Recovery Act should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act. Funding provided through the Recovery Act that is supplemental to an existing grant is one-time funding.

NC Office of Economic Recovery and Investment (OERI)

The NC Office of Economic Recovery and Investment (OERI) has state contracting guidelines and reporting standards. All successful responses will address the OERI requirements as described later in this RFP. The OERI website is at <http://www.ncrecovery.gov/default.aspx> and current OERI provision are on pages 14 and 15 of this document.

SCOPE OF WORK

This competitive solicitation will provide incentives for the installation of solar, wind, biomass, and hydropower systems that use commercially available technologies. Guidelines for projects that will qualify include the following:

- Systems installed shall use commercially available technology;
- Solar water heating systems shall be either SRCC rated (OG -100) or meet Florida Solar Energy Center Standard 101-09;
- Electrical components shall be UL listed;
- Installation shall be in accordance with local plumbing, electrical, and contractor requirements;
- All projects shall have a monitoring and data acquisition system capable of accurate measurement of energy generated by the installed system and energy data must be available per time period (at least monthly); and
- Projects must have local approvals, permits, and requirements complete as appropriate
- All projects are subject to monitoring site visits before, during, and after project completion to verify progress and system operation; and,
- Reports noting energy production, jobs created, and other provisions of this document shall be completed on a quarterly basis from the award date through one year after project is completed.

Public sector projects (including non-profit sector projects - 501(c) (3) qualified organizations) selected for funding will receive a maximum of 50% of total project costs up to \$200,000 per project. Private sector projects selected for funding will receive 25% up to \$200,000. Total funding available in this project area is \$1,750,000 - \$3,500,000. The estimated number of awards is 17 – 30.

Evaluation Criteria

- Energy saved/generated – 20 points
(Use btus generated on an annual basis.)
- Jobs created/maintained – 20 points
(Use full-time-equivalent jobs.)
- Project team qualifications and corporate experience – 20 points
(See description below under Proposal Requirements – Corporate Background and Experience as well as Project Staffing and Organization)
- Project timetable – 15 points
(Note significant milestones in completing the project.)
- Project location – 15 points for Tier 1 NC Counties, 10 points for Tier 2 NC Counties
(A current map of economically distressed counties can be found at <http://www.nccommerce.com/NR/rdonlyres/7C8CE8F4-3E73-461F-94F4-FE0F767744C9/0/2009Article3JTier.pdf>).
15 points will also be awarded to projects located in counties that exceed the state average unemployment rate.
- Project and technology description – 15 points
(See description below under Proposal Requirements – Technical Approach)
- Fund leveraging – 10 points
(See description below under Proposal Requirements – Cost Proposal)
- Monitoring system documented – 10 points
(See description below under Proposal Requirements – Technical Approach)
- Emissions reductions – 5 points
(See description below under Proposal Requirements – Technical Approach)

Maximum Points – 130

Fund Distribution

- Approved projects shall receive a preliminary payment in an amount equal to 50% of the project cost.
- Upon receipt of documentation, including paid invoices, showing acceptable progress and expenditures of the initial funds, an amount equal to 40% of the project cost shall be released.
- Upon final acceptance of the project and receipt of all required documentation, the remaining 10% will be paid.

PROPOSAL REQUIREMENTS

The response to this RFP shall consist of the sections followed below sections.: Proposals should be clearly formatted using inch margins, a clear typeface of at least 11 font (recommended 12 font), and include page numbers.

Corporate Background and Experience
Project Staffing and Organization
Technical Approach
Outsourcing
Cost Proposal

1. Corporate Background and Experience

This section shall include background information on the organization and should give details of experience with similar projects. A list of at least three (3) references (including contact persons and telephone numbers) for whom similar work has been performed shall be included.

2. Project Staffing and Organization

This section must include the proposed staffing, deployment and organization of personnel to be assigned to this project.

The offeror shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including brief resumes (one page maximum) citing experience with similar projects and the responsibilities to be assigned to each person. It is highly recommended that potential contractors proposing solar projects have staff that have completed or have scheduled dates to take the National Association of Board Certified Energy Practitioner (NABCEP) exams for solar thermal or photovoltaic technologies. The NABCEP website can be found at <http://www.nabcep.org/>

3. Technical Approach

This section shall include, in narrative, outline, and/or graph form the offeror's approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. A description of each task and deliverable and the schedule for accomplishing each shall be included. The technical approach should also include the items noted below. Please limit the technical approach to no more than 10 pages. (Feasibility and/or technology assessments can be in an appendix). The technical approach description shall include the points below.

- the location where the project will be installed or operated, including the county
- a description of the technology used in the project (must be commercially available)
 - include technology assessments/feasibility studies completed as an attachment (i.e. anemometer data for a proposed wind project)
- note the energy that will be saved and/or generated as direct result of project
- description of monitoring and data acquisition system capable of accurate measurement of energy generated (energy data must be totaled on a monthly or more frequent basis)
- note if this project will include any educational aspects or be accessible to the public for tours
- greenhouse gas reductions noted in tons of carbon dioxide equivalent avoided on an annual basis
- jobs created and/or maintained as a direct result of this funding request – use full-time-equivalent jobs
- description of warranty, maintenance, and/or regular service requirements for the technology installed and the provider of these services (include the service provider location)

4. Outsourcing

The Vendor must detail the manner in which it intends to utilize resources or workers located outside of the United States, and the State of North Carolina will evaluate the additional risks, costs and other factors associated with such utilization to make the award for this proposal as deemed by the awarding authority to be in the best interest of the State. For any proposed or actual utilization or contract performance outside of the United States, the offeror's proposal must include:

- a) The location of work performed under a state contract by the vendor, any subcontractors, employees, or other persons performing the contract.
- b) The corporate structure and location of corporate employees and activities of the vendors, its affiliates or any subcontractors.

The State may initiate proceedings to debar a vendor from participation in the bid process and from contract award as authorized by North Carolina law, if it is determined that the vendor has refused to disclose or has falsified any information provided herein.

5. Cost Proposal

Projects selected for funding will receive a maximum of 25% of total project costs up to \$100,000 per project. The Cost Proposal shall contain:

Personnel costs (including hourly rates and total hours)

Travel and Subsistence Expenses

Subcontractor Costs (if any)

Equipment Costs

Other Costs (e.g., office expenses)

Fund Leveraging/Matching Funds (in-kind or cash funds from the offeror and/or other source besides this funding request)

TOTAL COST A total not to exceed cost representing the maximum amount for all work to be performed funded from this RFP must be clearly indicated under this heading.

COST PROPOSAL/EXECUTION OF PROPOSAL

By submitting this proposal, the potential contractor certifies the following:

- _____ This proposal is signed by an authorized representative of the firm.
- _____ It can obtain insurance certificates as required within 10 calendar days after notice of award.
- _____ The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.
- _____ All labor costs, direct and indirect, have been determined and included in the proposed cost.
- _____ The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.
- _____ The potential contractorofferor is registered in NC E-Procurement @ Your Service or agrees to register within two days after notification of contract award.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within ninety (90) days from the date of the opening, to furnish the subject services for a cost not to exceed \$_____.

OFFEROR: _____

ADDRESS: _____

CITY, STATE, ZIP CODE: _____

TELEPHONE NUMBER: _____ FAX: _____

E-MAIL: _____

Principal Place of Business if different from above (See General Information on Submitting Proposals, Item 18.):

Will any of the work under this contract be performed outside the United States? (If yes, describe in technical proposal.) Yes No

BY: _____ TITLE: _____ DATE: _____
(Signature)

(Printed name)

ACCEPTANCE OF PROPOSAL

(Using Agency Name)

BY: _____ TITLE: _____ DATE: _____

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL.

Unsigned proposals will not be considered.

Where Service Contracts Will Be Performed

In accordance with NC General Statute 143-59.4 (Session Law 2005-169), this form is to be completed and submitted with the offeror's (technical) proposal/bid.

Issuing Agency: Department of Administration Solicitation #200900845
Agency Contact Person & phone #: Mildred C. Christmas, (919) 807-4525

Solicitation Title / Type of Services: Renewable Energy Project

OFFEROR: _____

City & State: _____

Location(s) from which services will be performed by the contractor:

Service	City/Providence/State	Country
_____	_____	_____
_____	_____	_____
_____	_____	_____

Location(s) from which services are anticipated to be performed outside the U.S. by the contractor:

_____	_____	_____
_____	_____	_____

Location(s) from which services will be performed by subcontractor(s):

Service	Subcontractor	City/Providence/State	Country
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Location(s) from which services are anticipated to be performed outside the U.S. by the subcontractor(s):

_____	_____	_____	_____
_____	_____	_____	_____

(Attach additional pages if necessary.)

GENERAL INFORMATION ON SUBMITTING PROPOSALS

- EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation. Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.
- CERTIFICATION:** By executing the proposal, the signer certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of our 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 that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.
- ORAL EXPLANATIONS:** The State shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
- REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
- ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

It is desirable that all responses meet the following requirements:

- All copies are printed **double sided**.
 - All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
 - Unless absolutely necessary, all proposals and copies should **minimize or eliminate use of non-recyclable or non re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.
- COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the State of North Carolina will not reimburse any offeror for any costs incurred prior to award.
 - TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of 90 days. Although the contract is expected to be awarded prior to that time, the 90 day period is requested to allow for unforeseen delays.
 - TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
 - CONFIDENTIALITY OF PROPOSALS:** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing agency, government or private, until after the award of the contract. Offerors not in compliance with this provision may be disqualified, at the option of the State, from contract award. Only discussions authorized by the issuing agency are exempt from this provision.
 - RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the State when received.
 - OFFEROR'S REPRESENTATIVE:** Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
 - SUBCONTRACTING:** Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.
 - PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.

14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
15. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When an offeror wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Contract status and Award notices are posted on the Internet at <http://www.pandc.nc.gov/>. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.pandc.nc.gov/protests.pdf> for more information.)
16. **TABULATIONS:** The Division has implemented an Interactive Purchasing System (IPS) that allows the public to retrieve bid tabulations electronically from our Internet web site: <http://www.pandc.nc.gov/>. Click on the IPS BIDS icon, click on Search for Bid, enter the RFP number, and then search. Tabulations will normally be available at this web site not later than one working day after opening. Lengthy tabulations may not be available on the Internet, and requests for these verbally or in writing cannot be honored.
17. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on our Internet web site: <http://www.pandc.nc.gov/>.
18. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident offerors. The "Principal Place of Business" is defined as the principal place from which the trade or business of the offeror is directed or managed.

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS
(Contractual and Consultant Services)

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
2. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined
3. **INDEPENDENT CONTRACTOR:** The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.
4. **KEY PERSONNEL:** The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Agency's Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified in the Contractor's proposal.
5. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Agency's Contract Administrator. Acceptance of an offeror's proposal shall include any subcontractor(s) specified therein.
6. **PERFORMANCE AND DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, the Agency shall thereupon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined.

In case of default by the Contractor, the State may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State reserves the right to require a performance bond or other acceptable alternative performance guarantees from successful offeror without expense to the State.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

7. **TERMINATION:** The Agency may terminate this agreement at any time by *30 days* notice in writing from the Agency to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Agency, become its property. If the contract is terminated by the Agency as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.
8. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice(s) or acceptance of services, whichever is later, or in accordance with any special payment schedule identified in this RFP. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
9. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Agency for the purpose set forth in this agreement.
10. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency.
11. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the State for loss of damage of such property.

12. **COPYRIGHT:** No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
13. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. The Contractor shall retain all records for a period of three years following completion of the contract.
14. **ASSIGNMENT:** No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:
 - a. Forward the contractor's payment check(s) directly to any person or entity designated by the Contractor, or
 - b. Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.
15. **COMPLIANCE WITH LAWS:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
16. **AFFIRMATIVE ACTION:** The Contractor shall take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
17. **INSURANCE:** During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:
 - a. Worker's Compensation - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is subcontracted, the contractor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.
 - b. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability).
 - c. Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

18. **ADVERTISING:** The offeror shall not use the award of a contract as part of any news release or commercial advertising.
19. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This Request for Proposals, any addenda thereto, and the offeror's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
20. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the Agency and the Contractor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.
21. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

22. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
23. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses 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 in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
24. **OUTSOURCING:** Any vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the State agency responsible for the contract.

Vendor must give notice to the using agency of any relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the United States.

7/7/2009

American Recovery and Reinvestment Act of 2009

CONTRACT PROVISIONS

By submission of a proposal, Contractor agrees to comply with the following provisions. Failure to comply with any and all provisions herein may be cause for the contracting agency to issue a cancellation notice to a contractor.

Reporting Requirements

The Contractor is notified that this project will be financed with *American Recovery and Reinvestment Act of 2009* (hereinafter, "ARRA") Funds. The Contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the State shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the Contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

Posting with the Local Employment Security Commission

In addition to any other job postings the Contractor normally utilizes, the Office of Economic Recovery & Investment (hereinafter, "OERI") requires that the Contractor shall post with the local Employment Security Commission Office all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semiskilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum posting of five days before the hiring decision. The Contractor and any Subcontractor shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI.

Required Contract Provision to Implement ARRA Section 902

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) Examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Authority of the Inspector General provision

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Buy American provision

Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be manufactured in the United States. Contractor agrees to abide by this provision and shall maintain records of such purchases for inspections by authorized agents of the State of North Carolina and federal agencies. The Contractor must obtain written exception from this provision from the agency issuing the contract.

Wage Rate Provision

Section 1606 of the ARRA requires that all laborers and mechanics employed by contractors and subcontractors with funds from the ARRA shall be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. The contractor agrees that by the submission of a proposal in response to a solicitation funded in whole or in part with recovery funds, continuous compliance will be maintained with the Davis-Bacon Act.

Availability and Use of Funds

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Whistleblower Provisions

Contractors understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 85-245 (applies to anyone, including state employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees.

Outsourcing outside the USA without Specific Prior Approval Provision

Contractor agrees not to use any recovery funds from a contract or any other performance agreement awarded by the State of North Carolina, its agencies, or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.

Federal, State and Local Tax Obligations

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

Anti-Discrimination and Equal Opportunity

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

Office of State Budget and Management Access to Records

OERI requires that the contractor and subcontractor agree to allow the Office of State Budget and Management internal auditors and state agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency.

