



POTENTIAL FEMA REIMBURSABLE SERVICES

REQUEST FOR BID

PWC2425036

**STORM SUPPORT: EMERGENCY VAC TRUCK
SERVICES**

Date of Issue: November 27, 2024

Bid Due Date: December 17, 2024

4:00 p.m.

Direct all inquiries concerning this RFB to:

Leticia Gilmore

Procurement Advisor

procurement@faypwc.com

Contents

ADVERTISEMENT FOR BID	3
INSTRUCTIONS TO BIDDERS	4
PURPOSE AND BACKGROUND	4
OBJECTIVE OF THE REQUEST	4
RFB SCHEDULE	4
QUESTIONS	4
REFERENCES	5
VENDOR REGISTRATION VIA ISUPPLIER	6
SUBMISSION INSTRUCTIONS	6
QUANTITIES AND PRICING	7
EVALUATION AND AWARD	8
PERFORMANCE AND PAYMENT	8
ATTACHMENT A: SCOPE OF WORK	10
GENERAL	10
TASKS/DELIVERABLES	10
ATTACHMENT B: BID PRICING FORM	11
ATTACHMENT C: CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS	13
ATTACHMENT D: AT A GLANCE	14
ATTACHMENT E: PWC SERVICE AGREEMENT	15
Exhibit B: FEDERAL UG AND FEMA PROVISIONS	23
ATTACHMENT F: MWBE AFFIDAVITS	38
ATTACHMENT G: SMALL LOCAL SUPPLIER/MWDBE SUBCONTRACTOR DISCLOSURE FORM	47
ATTACHMENT H: BID SUBMITTAL CHECKLIST	48

**ADVERTISEMENT FOR BID
FAYETTEVILLE PUBLIC WORKS COMMISSION
STORM SUPPORT: EMERGENCY VACTOR TRUCK SERVICES**

**Cumberland County
North Carolina**

Bids are solicited and will be received at Fayetteville Public Works Commission, Administration Building, Procurement Department, 955 Old Wilmington Road, Fayetteville, NC 28301, until **4:00 p.m., EST Tuesday, December 17, 2024**, for the **STORM SUPPORT: EMERGENCY VACTOR TRUCK SERVICES**.

The successful bidder will be required to provide emergency support using vactor trucks to perform "pump and haul" operations to maintain sanitary sewer system flows during and after storm events. The successful bidder would be responsible for pumping sanitary sewer from manholes, lift station wet wells, etc., and haul material to designated manholes in the collection system to drain the sanitary sewer back into the collection system. Services will include emergency deployments to restore essential services during storm events. This project may involve FEMA reimbursements and must comply with Federal Uniform Guidance (UG) and FEMA procurement standards.

Enclosed please find the Instructions to Bidders, Scope of Work, and Bid Pricing Form. Bids shall be submitted on the forms provided herein, or exact copies thereof, and the bidder shall return one copy of the entire bid packet along with the completed Bid Pricing Form and any other information specified in the bid documents.

Questions regarding this bid must be submitted in writing to the attention of **Leticia Gilmore**, at procurement@faypwc.com no later than **5:00 p.m., EST Tuesday, December 10, 2024**, in order to be considered for a response.

PWC may receive financial assistance from the **Federal Emergency Management Agency (FEMA)**. The bidder to whom the agreement is awarded shall comply with the statutory requirements of **Federal Uniform Guidance (UG) and FEMA**. These provisions will be specified in an addendum to the service agreement **and samples are included in Attachment E of the RFB**. Certified Historically Underutilized Business Certified vendors are encouraged to submit a bid for this solicitation.

Email bids to procurement@faypwc.com with the bid title and number in the subject line "**RFB: PWC2425036 STORM SUPPORT: EMERGENCY VACTOR TRUCK SERVICES**". Late bids will not be considered.

Fayetteville Public Works Commission reserves the right to reject any or all bids for any reason determined by PWC to be in its best interest, or to award the bid to the lowest responsible bidder or bidders, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

FAYETTEVILLE PUBLIC WORKS COMMISSION
Nikole Bohannon
Procurement Manager

INSTRUCTIONS TO BIDDERS
FAYETTEVILLE PUBLIC WORKS COMMISSION
STORM SUPPORT: EMERGENCY VACTOR TRUCK SERVICES

PURPOSE AND BACKGROUND

The successful bidder will be responsible for providing all necessary equipment, labor, and material to perform comprehensive vactor truck services to support PWC's recovery efforts. This includes efficient and effective solutions for the removal and transportation of liquid waste, sludge, and other materials. The successful bidder will aim to promote environmental sustainability by ensuring proper disposal and treatment of waste while also adhering to local regulation and safety standards.

OBJECTIVE OF THE REQUEST

It is the intent of this bid request to obtain pricing for STORM SUPPORT: EMERGENCY VACTOR TRUCK SERVICES within the detailed scope of work section of this Request for Bid (RFB). You are requested to submit your bid on the enclosed Bid Pricing Form. The bid outcome will result in a one-year Service Agreement for 2025 calendar year.

RFB SCHEDULE

The following table shows the schedule of events to prepare your organization's response. The key deadlines and targeted dates for this process are as follows:

Action	Responsibility	Date/Time
Submit Written Questions	Bidders	Tuesday, December 10, 2024, 5:00 p.m.
Provide Response to Questions	PWC	Thursday, December 12, 2024, 5:00 p.m.
Submit RFB (via Email)	Bidders	Tuesday, December 17, 2024, 2:00 p.m.
Award RFB Target Draft	PWC	Tuesday, December 23, 2024
Service Agreement Target Start Date	PWC & Bidder	Wednesday, January 1, 2025

QUESTIONS

Written questions shall be e-mailed to procurement@faypwc.com by the date and time specified in the RFB schedule. Firms will enter "**RFB PWC2425036 – Questions**" as the subject of the email.

Questions received prior to the submission deadline date, the Procurement Advisor's response, and any additional information deemed necessary by PWC will be posted in the form of an addendum to the PWC website and shall become an Addendum to this RFB. No information, instruction, or advice provided orally or informally by any PWC personnel, whether made in response to a question or otherwise concerning this RFB, shall be considered authoritative or binding. Firms shall rely only on written material contained in an Addendum to this RFB.

Inquiries should be submitted no later than the date and time noted in the RFB schedule. Questions answered verbally will be followed up by written addenda as deemed necessary; oral interpretations shall have no effect.

REFERENCES

Bidders are encouraged to provide at least three (3) references where your company has delivered services of similar size and scope. PWC may contact these references to assess whether the services provided align with the scope outlined in Attachment A and if the bidder's performance was satisfactory. The information obtained may be considered in the evaluation of the bid. If PWC is listed as a reference, it will not count toward the three (3) encouraged references but may be included as an additional reference.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER	EMAIL
Fayetteville Public Works Commission, if applicable			

MINORITY, WOMEN, AND DISADVANTAGED BUSINESS ENTERPRISE (MWDBE) PROGRAM / SMALL LOCAL SUPPLIER (SLS) PROGRAM

PWC is committed to promoting the utilization of Minority, Women, and Disadvantaged Businesses in PWC's geographical statistical area (GSA) by providing equal opportunity for participating in all aspects of PWC's contracting and procurement programs. The GSA consists of NCDOT division areas 3-8, and 10. PWC is also committed to promoting the utilization of small, local businesses in the Fayetteville Metropolitan Statistical Area (MSA) by increasing opportunities for those businesses to participate in PWC procurements. The MSA consists of Cumberland County, Hoke County, and Harnett County.

Bidders must report their efforts to engage MWDBEs, Historically Underutilized Businesses (HUBs), and Small Local Suppliers for each project, regardless of specific project requirements.

Bidders shall submit the MWDBE Affidavits A or B, & E provided within **Attachment F** with their bid submittal. The Affidavits shall be signed and notarized.

In accordance with PWC's MWDBE Program, the goal shall be to award four percent (9%) of the total contract dollars to MBE firms and four percent (4%) to WBE firms. A complete copy of PWC's MWDBE Program is available for inspection at PWC Procurement Department.

Bidders are encouraged to document good faith efforts and subcontractor utilization in the MWDBE Affidavits C or D at the time of bid submission, though it is not mandatory. If these efforts are not included, PWC's Program staff will contact the lowest responsive bidder to request documentation, which must be provided within 24 hours or by the next business day.

The following is a list of the efforts that should be made by the prime service provider to encourage MWDBE participation. In order to receive credit for having made "good faith efforts", the prime service provider should document all actions taken to include the following:

- 1) Attending pre-bid meetings scheduled by the department;
- 2) Identifying selected specific items of the project which could be executed by a MWDBE;
- 3) Soliciting MWDBE service provider participation in a reasonable time before the proposals are due through advertisements in circulation media, trade publications, and minority-focused media;
- 4) Contacting local firms, firms owned by minorities or women, and associations or business development centers which disseminate information to local businesses and businesses owned by minorities or women in a timely manner to allow sufficient time for MWDBEs to respond;
- 5) Following up on initial solicitations of interest by contacting the MWDBE to determine whether the MWDBE was interested in performing specific items of the project;
- 6) Attempting to enter into joint venture or partnership arrangements with MWDBEs and provide interested MWDBEs with information about the requirements for the project;
- 7) Providing assistance to MWDBEs in the review of proposals and work to be done by sub-service providers;
- 8) Using available directories of certified MWDBEs and other available resources;
- 9) Ensuring that the proposer negotiated in good faith with the MWDBE and did not unjustifiably reject as unsatisfactory quotes prepared by any Minority, Women, or Disadvantaged Business Enterprise;
- 10) Making every effort to obtain Minority, Women, or Disadvantaged Business Enterprise participation that could reasonably be expected to produce a level of participation sufficient to meet the goals of PWC; and
- 11) Providing interested minority, women, and disadvantaged businesses with information relative to project requirements.

VENDOR REGISTRATION VIA ISUPPLIER

- 1) All vendors interested in doing business with PWC must register as a vendor through the iSupplier Portal using the link below. The iSupplier self-service portal enables vendors to have real-time access to information regarding purchase orders, invoices, and payments through a secure environment. Attach a copy of your W9 to your online registration.

<https://www.faypwc.com/isupplier-doing-business-with-pwc/>

SUBMISSION INSTRUCTIONS

- 1) In accordance with FEMA guidelines, the use of sole source contracts or contracts piggybacked from other entities is strictly prohibited. Any bid submission proposing these methods will be deemed non-compliant and disqualified from award consideration.

- 2) Bids should be complete and carefully worded and should convey all the information requested in the RFB. Bids should be prepared simply and economically, providing a straightforward, concise description of the bidder's capabilities to satisfy the requirements of the RFB. Emphasis should be on completeness and clarity of content. If the bid includes any comment over and above the specific information requested in the RFB, the bidder should include this information as a separate appendix to its bid. Bids that include clarifications or modifications to any of the RFB's contractual requirements, or a bidder's standard terms and conditions, may be deemed non-responsive and not considered for award at PWC's discretion.
- 3) Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the RFB. Failure to comply with these requirements shall constitute sufficient cause to reject a bid without further consideration. PWC reserves the right to accept or reject any bid and to annul the bidding process and reject all bids at any time prior to award of a Service Agreement, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders the reasons for PWC's action.
- 4) Bids may be withdrawn by the bidder only in writing and if receipt of such withdrawal is acknowledged by PWC prior to the time for the bid submittal deadline identified in the Advertisement for Bidders (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the bidder's letterhead and signed by an official of the bidder duly authorized to make such request. Any withdrawal request made after the bid submittal deadline shall be allowed only if the price bid was based upon a mistake that constituted a substantial error, provided the bid was submitted in good faith, and then only pursuant to the terms of N.C.G.S. § 143-129.1.
- 5) Bids submitted in an envelope must have the bid title, date, and time of the bid submittal deadline on the front of the envelope no later than the bid due date and time. The bid will be due at the **Fayetteville Public Works Commission, Administration Building, Procurement Department, 955 Old Wilmington Road, Fayetteville, NC 28301** unless electronically submitted.
- 6) Bids will be examined promptly after the due date and an award will be made at the earliest possible date. Bids must be held firm for PWC for a period of sixty (60) days after the bid due date. A purchase order will be issued to the awarded bidder.
- 7) Bidders shall submit bids only on the Bid Pricing Forms provided herein, or exact copies thereof (See Attachment B – Bid Pricing Form). Failure to provide full and complete Bid Pricing Forms using the form provided herein will result in a bid being deemed non-responsive.
- 8) All bids must be signed by an authorized official of the bidder. Bids may be rejected for any omission, alteration of form, additions not called for, conditional bid, or any irregularities of any kind.
- 9) Do not submit alternate bids unless specifically called for on the Bid Pricing Forms.

QUANTITIES AND PRICING

- 1) Quantities listed are estimates ONLY based on historical usage. PWC does not guarantee a

minimum or maximum quantity to be purchased.

- 2) All bidders are advised to include all costs incurred by the bidder in delivering the **STORM SUPPORT: EMERGENCY VACTOR TRUCK SERVICES** to the PWC in their bid submittal.

EVALUATION AND AWARD

- 1) In compliance with FEMA's procurement standards, a cost analysis will be conducted to demonstrate price reasonableness for all contract modifications or when adequate price competition is not present. Bidders are required to submit detailed cost breakdowns for review if requested.
- 2) An award of a contract is subject to approval by the Water Construction Department.
- 3) PWC reserves the right to inspect, at a reasonable time, the equipment, item, plant, or other facilities of a prospective Bidder prior to award, and during the Service Agreement term, as PWC deems necessary to determine that such equipment, item, plant, or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Service Agreement.
- 4) PWC reserves the right to request additional information from bidders to aid in the evaluation process. This information may include but is not limited to, financial statements, a reference list of contracts of similar size, etc.
- 5) PWC reserves the right to make a single award for all items or may award separate contracts to multiple bidders for various items to the lowest responsive, responsible bidder or bidders, taking into consideration product quality, performance to PWC, and conformity with the specifications in these bid documents. PWC may also consider, among other things, the Bidder's past performance conduct on other contracts, and other information as PWC deems necessary to assist in the evaluation of any bid.
- 6) PWC personnel will issues work authorizations via email, on an as-needed basis throughout the life of the Service Agreement. Bidder shall confirm receipt of each work authorization by e-mail stating their response time.
- 7) The Service Agreement is anticipated to be awarded on or about January 1, 2025, and will terminate on December 31, 2025. The agreement will include a contract ceiling price, ensuring that payment does not exceed the Federal Uniform Guidance small purchase threshold, which ranges from \$10,000.00 to \$249,999.99

PERFORMANCE AND PAYMENT

- 1) As part of the bid submission, bidders must include a subcontracting plan. This plan should clearly outline the percentage of work to be subcontracted and provide a list of all subcontractors intended to be used for the project. Failure to submit a complete subcontracting plan may result in bid disqualification.
- 2) Bid price shall constitute the total cost to PWC for complete performance in accordance with the requirements and scope of work herein, including all applicable charges handling, administrative, and other similar fees. The bidder shall not invoice for any amounts not

specifically allowed for in this RFB. Complete **ATTACHMENT B: PRICING FORM** and include it in the bid.

- 3) Payment for equipment, material, supplies, etc. purchased pursuant to this bid shall be made by Public Works Commission approximately thirty days after the same has been delivered, inspected, approved and the invoice received in the PWC Accounts Payable Office, P.O. Box 1089, Fayetteville, North Carolina 28302.

ATTACHMENT A: SCOPE OF WORK

GENERAL

The contractor will provide vactor truck services to support PWC's storm recovery efforts. Services include pump and haul operations to restore essential infrastructure. The contractor must be available for routine services and emergency deployments during and after storm events, ensuring compliance with FEMA and local guidelines.

TASKS/DELIVERABLES

1. Pump & Haul Operations

- a. Provide a vactor truck with **1 operator** and 1 laborer for pump and haul operations to remove sanitary sewage as required.

2. Emergency VAC Truck Stand-by

- a. Provide stand-by services with a vactor truck for **immediate deployment** during storm events.
- b. The truck and operator must be available to mobilize within **2 hours** of notification from PWC.

3. Emergency VAC Truck Services (1 Operator)

- a. During emergencies, deploy a VAC truck with **1 operator and 1 laborer** for sanitary sewer removal.
- b. Provide immediate response upon activation by PWC to mitigate damage and restore services.

Payment Terms for Time and Material Contracts. Payments for time and material contracts will only apply for the first 70 hours of actual work following a disaster event. Beyond this period, work must be conducted on a unit-price or lump-sum basis in accordance with FEMA requirements.

PERFORMANCE MONITORING AND EVALUATION

The successful bidder's performance will be evaluated based on response times, the quality of work performed, and adherence to the terms and requirements outlined in this RFB. Failure to meet performance standards may affect future contract opportunities with PWC.

ATTACHMENT B: BID PRICING FORM

Bidder Information

Name of Company

Address

Phone Number

Email Address

Federal ID No.

**Is the business SDBE,
MWBE, DBE, or HUB
Printed Name**

Title

Signature

Date

Bidders shall submit bids only on the Bid Pricing Forms provided herein, or exact copies thereof. Failure to provide full and complete Bid Pricing Forms using the form provided herein will result in a bid being deemed non-responsive.

Pricing Table

Description	Est. Quantities	Unit	Rate (USD)	Extended
Vactor Truck with Operator and Laborer		Per hour (Standby)	\$	\$
Vactor Truck with Operator and Laborer		Per hour (In Service)	\$	\$
Mobilization Fee		Per Event	\$	\$
Demobilization Fee		Per Event	\$	\$
Tanker Truck with Operator		Per hour (Standby)	\$	\$

Tanker Truck with Operator		Per hour (In Service)	\$	\$
Support Vehicles		Per hour (Standby)	\$	\$
Support Vehicles		Per hour (In Service)	\$	\$
TOTAL				\$

ATTACHMENT C: CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Primary Participant, _____ (major third party contractor), certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature

Title

Printed Name

Date

PWC at a Glance



Customers



- In operation since 1905
- Provides Electric, Water & Wastewater Services
- Total Customers: 121,886
- Number of Services: 274,101
 - Electric: 83,537
 - Water: 92,453
 - Wastewater: 92,100
 - Irrigation: 6,011
- Customers with 2+ services: 75%
- Annual Customer Turnover: 20-25%

Customer Service



- Annual Customer Contacts: 495,136
- Average Monthly Calls: 32,363
- Annual Bills Generated: 1.4 Million
- Customer Incentive Programs: 13
- Annual Water Leak Notifications: 20,363 (17.2 million gal)

Employees



- Number of Employees: 651
- Average Tenure of Employees: 10 years
- Average Age: 45
- Annual Turnover: 9.0%*
- Annual Hours Worked: 1.2 Million

*non retirement

Facilities



- Butler-Warner Generation Plant (268 MW)
 - Electric Service Area: 147 Sq. miles
- P.O. Hoffer Water Treatment Facility (39.5 MGD)
- Glenville Lake Water Treatment Facility (18.0 MGD)
 - Drinking Water Service Area: 116 Sq. miles
- Cross Creek Water Reclamation Facility (25 MGD)
- Rockfish Creek Water Reclamation Facility (21 MGD)
 - Wastewater Service Area: 109 Sq. miles

Electric Operations



- Purchase Wholesale Power from Duke Energy
- Only NC municipal system to own/operate a generation plant (Dispatched for use by Duke Energy)
- Generation Capacity: 268 MW
- Solar Generation: 1 MW
- Battery Storage: 2 MW
- Annual MWH Sold: 1.9 million
- System Peak: 499 MW (Feb. 9, 2015)
- Reliability Rate: 99.99%
- Electric Distribution Substations: 32
- Distribution Lines: 1,360 miles
- Transmission Lines: 123 miles
- Streetlights/Area Lights: 37,853

Water/Wastewater Operations



- Population Served: 225,000
- Drinking Water Treated: 10.7 Billion Gallons/Year
- 100% Compliant for all EPA Drinking Water Standards
- Daily Water Treatment Capacity: 57.5 MG/Day
- Daily Wastewater Treatment Capacity: 46 MG/Day
- Water/Wastewater Infrastructure: 2,825 miles
- Hydrants: 8,616
- Sanitary Sewer Lift Stations: 78
- Manholes: 34,002

Financial



- FY24 Annual Operating Budget: \$428.8 Million
- Total Assets: \$1.62 Billion
- Bond Rating: Aa2(Moody's), AA (Standard & Poor), AA (Fitch)
- Operations & Maintenance Expense per Customer: \$505 (\$557 National Median)
- Annual Cash Contributions to the City of Fayetteville in Lieu of Taxes: \$12.2 Million
- Annual Streetlight Services: \$3.9 Million
- Annual Annexation Construction Costs: \$4.8 Million
- Total Annual Contributions to the City of Fayetteville: \$25.4 Million

Visit www.faypwc.com to learn more about PWC



For the internal use of Fayetteville Public Works Commission only

Requester/Responsible Employee:
Project Title:
Contract Number: (Assigned by Procurement)
Purchase Order Number:
Bid Number (if applicable)
Account String (w/Budget Code): (for project funding)
Not to Exceed Amount:
Completion or Termination Date:
Work Scope/Purpose:

Notes: (1) This Amendment may be utilized for all services (including legal, accounting, and consulting services). However, (a) for services subject to G.S. 143-64.31 (including but not limited to engineering and surveying services), PWC must first comply with the applicable RFQ requirement, unless exempted by law; and (b) for Information Technology, as defined in G.S. 143B-1320, PWC must first comply with applicable RFP requirements set forth in G.S. 143-129.8.

(2) A purchase order must be generated by Procurement and approved by the CFO to encumber funds.

SERVICE AGREEMENT

This Service Agreement (“Agreement”) is made by and between Fayetteville Public Works Commission (“PWC”), a North Carolina public authority, and _____ (“Provider”), a _____ (each of PWC and Provider is referred to herein as a “Party” and collectively as the “Parties”), as of the date of execution last written below (the “Effective Date”). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Services. PWC retains Provider to _____ as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Services”). The Services shall be completed on or prior to the deadline(s) set forth in Exhibit A, but in any event no later than _____. In the event of a conflict between the provisions of this Agreement and the provisions of any attachment or exhibit to this Agreement, the terms of this Agreement shall govern. Provider shall not use the existence of this Agreement or the name of Fayetteville Public Works Commission as part of any commercial advertising or marketing of products or services without the prior written consent of PWC.

2. Service Standards. Provider shall perform and deliver the Services in accordance with (a) the professional skill and care ordinarily exercised by other providers delivering services on the same or similar projects; (b) Provider’s professional licensing obligations; and (c) all applicable laws. Provider shall notify PWC promptly of the discovery of errors, omissions, discrepancies, or inconsistencies in the Services rendered. If any of the Services that Provider renders or work product, which includes but is not limited to reports, analyses, designs, specifications, plans, drawings, and other documents, that Provider delivers to PWC contain errors or omissions, Provider shall promptly correct or supplement such Services at no additional cost to PWC. PWC’s acceptance of, use of, or payment for such Services shall in no way alter or reduce the Service standards set forth herein or PWC’s rights hereunder. Provider shall not assign or subcontract or transfer the Services or any rights under or interest in this Agreement without the prior written consent of PWC. Provider shall treat all information from PWC and work product resulting from the Services as confidential and proprietary, unless such information is available from public sources, and Provider shall not publish or disclose

confidential or proprietary information without the prior written consent of PWC for any purposes other than the performance of the Services.

3. Delivery of Services and Ownership of Work Product. Time is of the essence with regard to the delivery of the Services. In the event of suspension or termination of the Services, Provider shall promptly deliver to PWC all work product completed or in progress as of the date of termination along with reproducible documents, drawings, plans, specifications, and electronic records of the completed portion of the Services upon PWC's payment of the undisputed portion(s) of Provider's invoices in accordance with Section 8, Billing and Payment. Provider grants PWC an irrevocable license to use the work product resulting from the Services of Provider. The work product delivered by Provider to PWC in connection with the performance of the Services shall not infringe any intellectual property rights of any third party. Except as otherwise specified in this Agreement, Provider shall not use for its own purposes or allow a third party to use the work product resulting from the Services without the prior written consent of PWC.

4. Compensation. For the Services, Provider shall be compensated in the amount of _____ and 00/100 Dollars (\$_____.00) as set forth in Exhibit A. Provider's rates shall not be increased during the term of the Agreement or the performance of the Services without the prior written consent of PWC.

5. Payment Limitation. Notwithstanding any other provision in this Agreement, the total fees and expenses for the Services shall not exceed _____ and 00/100 Dollars (\$_____.00) (the "Cap"). Provider shall promptly notify PWC in writing when Provider has reached ninety percent (90%) of the Cap. **The Cap is not a fixed fee to which Provider is entitled.** PWC shall be obligated to pay only for Provider's actual time devoted to providing the Services and authorized, documented expenses incurred, not to exceed the Cap.

6. PWC's Duties. PWC shall: (a) timely provide such information in its possession, custody, or control as is reasonably necessary for Provider to perform the Services; (b) communicate promptly to Provider all decisions of PWC and clarifications that are reasonably needed by Provider; and (c) make payments to Provider in accordance with Section 8, Billing and Payment.

7. Representations and Warranties. Provider represents and warrants to PWC that Provider is duly licensed and authorized in the State of North Carolina to perform the Services. Each Party represents and warrants to the other Party that it is duly organized, validly existing and in good standing and has all requisite powers, rights, and authority to execute, enter into, and perform this Agreement in accordance with the terms and conditions of this Agreement, this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms and the person signing this Agreement on behalf of Provider has been properly authorized and empowered to enter into this Agreement.

8. Billing and Payment; Sales and Use Taxes. Provider shall invoice PWC monthly for Services performed and expenses incurred during the preceding calendar month. All invoices shall provide reasonable detail of the services performed and expenses for which reimbursement may be sought, along with supporting documentation for such expenses. PWC shall pay the undisputed portion of each invoice within forty-five (45) calendar days after PWC's receipt of the invoice. PWC shall reimburse expenses at the lower of actual or reasonable cost, except in regard to expenses that are specifically pre-approved in writing by PWC or are set forth and included in a fixed price service arrangement. All payments from PWC to Provider

shall be transferred electronically to Provider's designated financial institution, and Provider shall, prior to delivery of its first monthly invoice to PWC, supply the name of Provider's financial institution, routing number, and account number on the form available from PWC and provide to PWC a completed and signed IRS Form W-9. Provider has the right to impose a late payment charge of one percent (1%) per month for amounts unpaid by PWC by the date due. Provider shall maintain on a generally recognized accounting basis and retain for at least three (3) years the records supporting Provider's invoices to PWC. In the event of a dispute regarding a monthly invoice or any portion thereof: (a) Provider shall deliver to PWC all records supporting Provider's invoice(s) in dispute within ten (10) calendar days after PWC notifies Provider of the dispute, and Provider shall cooperate with PWC to verify the accuracy of all invoices; (b) Provider shall continue to proceed diligently with the performance of the Services pending resolution of the dispute; and (c) PWC shall pay Provider in accordance with this Agreement for all Services rendered by Provider which are not the subject of the dispute.

If the Services involve repair, maintenance, or installation subject to any sales and use tax under North Carolina law, then Provider shall comply with all of the following requirements so that PWC may recover the amount of the tax permitted under the law:

- a. Furnish PWC documentary evidence showing the material used, sales tax paid, and County paid (County of sale). The documentary evidence shall include Provider's certified statement showing total purchases of materials from each separate vendor and total sales taxes charged to PWC and paid by Provider. The documentary evidence shall also include Provider's certified statement as to the amount paid by PWC for sales tax on the Services delivered by Provider to PWC. A certified form is required even if no sales tax was paid for pay request period. Materials used from Provider's warehouse stock shall be shown in a certified statement at warehouse stock prices and amount of County of Use Tax charged to PWC and paid by Provider;
- b. Provider shall furnish to PWC invoices or copies of invoices for all materials purchased for said work within pay request period, and such invoices shall state the amount of North Carolina Sales Tax, if any, paid for materials. Provider shall also furnish to PWC invoices identifying the amount paid for the sales and use tax on Services that are subject to such taxation under North Carolina law; and
- c. Provider shall not include any tax paid on supplies, tools, and equipment that Provider uses to perform the Service.

9. Termination. Except in regard to Services to be provided for a fixed price, PWC has the right to terminate the provision of Services, with or without cause, by delivering written notice of termination to Provider, and PWC shall be obligated to pay Provider only for work performed and reasonable expenses incurred until delivery of the notice of termination. Either Party may terminate an Agreement to provide Services for a fixed price for cause by delivering written notice of the cause and termination to the other Party, provided that the Party receiving the notice of termination shall have seven (7) calendar days to cure the cause cited in the termination notice. "Cause" means action by the non-terminating Party that constitutes a material breach of this Agreement including, but not limited to, a failure to adhere to a schedule, failure to timely pay, and material failure to produce work product that is consistent with the applicable service standards.

10. Insurance. Provider shall maintain during the provision of Services and for at least three (3) years thereafter (collectively, the "coverage period") the following insurance coverages, which insurance shall be placed with insurance companies authorized to do

business in the State of North Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved in writing by PWC:

- (a) professional liability errors and omissions or malpractice insurance including contractual liability coverage with limits of not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate;
- (b) commercial general liability insurance with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$2,000,000 for Completed Operations and Products Liability;
- (c) worker's compensation insurance as required by State law; and
- (d) automobile liability insurance with limits not less than \$100,000 each person and \$300,000 each accident for bodily injury and property damage.

Prior to initiating the Services, Provider shall deliver to PWC certificates of insurance confirming each such coverage, and Provider shall direct its insurers to provide annually to PWC certificates confirming each such coverage during the coverage period. PWC shall be named as an additional insured in the comprehensive automobile and commercial liability insurance policies. Commercial general liability coverage shall be written on an "occurrence" basis. Upon PWC's request, Provider shall give prompt written notice to PWC of any and all claims made against the professional liability errors and omissions or malpractice insurance policy during the coverage period. Provider shall not reduce or allow the required insurance coverages to lapse without PWC's prior written approval. All policies for insurance must be endorsed to contain a provision giving PWC a thirty (30) calendar day prior written notice by certified mail of any cancellation of that policy or material reduction in coverage. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Provider fail to provide and maintain certificates as set forth herein, PWC shall have the right, but not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Provider, or to seek reimbursement for said payments from Provider. Any such sums paid by PWC shall be due and payable immediately by Provider upon notice from PWC. The insurance provisions of this Agreement shall not be construed as a limitation on Provider's responsibilities and liabilities pursuant to the terms and conditions of this Agreement. Provider's obligation to maintain insurance for three (3) years after completion of the Services shall survive the termination of this Agreement.

11. Indemnification and Liability. Provider shall indemnify, defend, and hold harmless PWC and its Commissioners, officers, employees, agents, and representatives (collectively, "Indemnitees") from and against all claims, actions, liabilities, damages, losses, costs, and expenses (including, without limitation, injury to or death of any persons and damage to property, economic and consequential damages and attorneys' fees) asserted by one or more third parties against one or more of the Indemnitees arising out of negligent or willful acts, violations of law, infringement of any patent, trademark, trade secret, copyright, or other intellectual property right of a third party, or omissions or breach of the obligations set forth in this Agreement by Provider or any of its employees, agents, representatives, and subcontractors. Provider's obligation to indemnify, defend, and hold harmless the Indemnitees shall survive the termination of this Agreement and shall include the duty to pay for the

reasonable attorney's fees and costs associated with defending the Indemnitee(s) by the legal counsel of each Indemnitee's choice.

12. Notices. Any notice which either Party is required or desires to give the other hereunder shall be deemed sufficiently given if, in writing, it is delivered personally, or sent by certified U.S. mail, return-receipt requested, postage prepaid, to the addresses listed hereinbelow, or such other address as either Party shall give to the other Party by written notice in accordance herewith. Any notice given herein by personal delivery shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered on the third Business Day after the same is deposited in an official United States Post Office, postage prepaid, or if sooner upon the date when the return receipt therefor is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities.

To PWC:
Fayetteville Public Works Commission
Attn: Timothy Bryant, CEO/General Manager
PO Box 1089
Fayetteville, NC 28302

To Provider:

"Business Day" means each calendar day that is not a Saturday, Sunday, holiday observed by the federal government for its employees, or holiday observed by the State of North Carolina for its employees.

13. Compliance. Provider hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Provider further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Provider hereby pledges, attests, and warrants through execution of this Agreement that Provider complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests, and warrants that all subcontractors currently employed by or subsequently hired by Provider to provide services for PWC shall comply with all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement. Provider hereby further acknowledges that the execution and delivery of this Agreement constitutes Provider's certification to PWC and to the North Carolina State Treasurer that, as of the Effective Date, Provider is not listed on (a) the Final Divestment List created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015, Chapter 147, Article 6E of the General Statutes of North Carolina (the "Iran Divestment Act"); or (b) the list of companies that the North Carolina State Treasurer determines to be engaged in a boycott of Israel in accordance with Article 6G of Chapter 147 of the General Statutes of North Carolina. Provider represents and warrants to Commission that Provider, and all persons and entities owning (directly or indirectly) an ownership interest in it: (i) are not, and will not become, a

person or entity with whom a party is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (ii) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (i) above. The provisions of 41 CFR 60-1.4, 60-300.5(a) and 741.5(a) are hereby incorporated by reference, as applicable. Provider shall at all times during the term of this Agreement comply with Executive Order 11246. Provider shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

Except in strict compliance with Environmental Laws (defined below), neither Provider nor its employees, agents, contractors, subcontractors, licensees or invitees shall use, handle, store, or dispose of (or permit the use, handling, storing, or disposal of) any hazardous or toxic waste or substance in delivering the Services (or transport, transship or permit the transportation or transshipment of the same over or through the real property managed or operated by PWC) which is regulated, controlled, or prohibited by any federal, state, or local laws, ordinances, and/or regulations, including without limitation the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. ("RCRA"); the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 801, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1321, et seq.; the Toxic Substances Control Act, 15 U.S.C. ("TSCA"); and the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. (as subsequently amended, "Environmental Laws"). As used herein, hazardous or toxic substances or materials shall include without limitation the following: (1) "hazardous wastes" as defined under RCRA or any other federal, state or local law or regulation, (2) "hazardous substances" as defined under CERCLA or any other federal, state or local law or regulation, (3) gasoline, petroleum, or other hydrocarbon products, by-products, derivatives, or fractions (including spent products), (4) "toxic substances" as defined under TSCA, (5) "regulated medical waste" as defined by 40 C.F.R. § 259.30, (6) any radioactive materials or substances, or (7) asbestos and asbestos containing products. Provider shall comply with the Emergency Planning and Community Right-to-Know Act of 1986, as amended. Provider shall immediately report orally to PWC and confirm in writing within three (3) hours any type of chemical spill that occurs in or on any real property managed or operated by PWC or any spill or release of the waste materials during the performance of the Services.

14. Miscellaneous Provisions. Provider is and shall remain an independent contractor and shall undertake performance of the Services pursuant to the terms of this Agreement as an independent contractor. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the Parties. No breach or non-performance of any term of this Agreement shall be deemed to be waived by either Party unless said breach

or non-performance is waived in writing and signed by the Parties and then only to the extent specifically stated. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance, and for any such breach or non-performance each Party shall be entitled to such remedies as provided by law. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality, and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal, or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal, or unenforceable; provided, however, severability shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement that is of the essence of this Agreement shall be void. This is the entire agreement of the Parties on the subject matter hereof, and all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between the Parties, whether written or oral, are hereby merged into the Agreement and superseded by this Agreement. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both Parties. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than the Parties. This Agreement shall be governed by the laws of the State of North Carolina without the application of the laws of any other state. The exclusive venue for all mediations and litigation and any other legal proceedings regarding this Agreement shall be the State and Federal Courts serving Cumberland County, North Carolina, and Provider consents to personal jurisdiction in such courts. Provider irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court serving Cumberland County or that any such suit, action or proceeding brought in any such court serving Cumberland County has been brought in an inconvenient forum. This Agreement may be executed in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. For purposes of this Agreement, a facsimile copy or scanned copy or photocopy of a party's signature shall be sufficient to bind such party. This Agreement shall be subject to execution by electronic means in accordance with Article 40 of Chapter 66 of the North Carolina General Statutes. The titles of the paragraphs throughout this Agreement are for convenience only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this instrument.

15. Morality Clause. If, in the sole opinion of PWC, at any time Provider or any of its owner(s), employee(s), or agent(s) (each party, owner, employee, and agent is an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by PWC or are scandalous or inconsistent with community standards or good citizenship or may adversely affect PWC's finances, public standing, image, or reputation or are embarrassing or offensive to PWC or may reflect unfavorably on PWC or are derogatory or offensive to one or more employee(s) or customer(s) of PWC, PWC may immediately upon written notice to Provider terminate this Agreement, in addition to any other rights and remedies that PWC may have hereunder or at law or in equity.

16. Conflicts. Except with PWC's knowledge and prior written consent, Provider shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise Provider's professional judgment with respect to the

Services. Provider shall disclose to PWC any business or personal relationship with any Commissioner, officer, director, manager, or supervisor of PWC.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Fayetteville Public Works Commission

By: _____
Timothy Bryant, CEO/General Manager

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act (N.C. Gen. Stat. § 159-1 et seq.).

By: _____
Rhonda Haskins, Chief Financial Officer

Approved as to form:

Legal Dept.

Exhibit B

FEDERAL UNIFORM GUIDANCE AND FEMA CONTRACT PROVISIONS

To the extent required by law, the following federal contract provisions required under the Uniform Guidance (2 C.F.R. §200.327 and 2 C.F.R. Part 200, Appendix II) apply to the Agreement. Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Agreement. In the event of a conflict between this Exhibit and the terms of the main body of the Agreement or any other exhibit or appendix, the terms of this Exhibit shall govern. For the purposes of this Exhibit B, the term "Owner" refers to Fayetteville Public Works Commission. References to "contractor" are to the Contractor or Provider under the Agreement, as applicable.

1. Equal Employment Opportunity. – *required for construction work*

During the performance of the Agreement, the contractor agrees as follows:

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

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of the Agreement or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

2. Davis- Bacon Act – *required for all construction work*

(1) **Minimum wages** —

- (i) **Wage rates and fringe benefits.** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in [paragraphs \(d\) and \(e\)](#) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of [paragraph \(a\)\(1\)\(v\)](#) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without

regard to skill, except as provided in [paragraph \(a\)\(4\)](#) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under [paragraph \(a\)\(1\)\(iii\)](#) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) **Frequently recurring classifications.**

- (A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to [§ 1.3\(f\)](#), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to [paragraph \(a\)\(1\)\(iii\)](#) of this section, provided that:
- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
 - (2) The classification is used in the area by the construction industry; and
 - (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- (B) The Administrator will establish wage rates for such classifications in accordance with [paragraph \(a\)\(1\)\(iii\)\(A\)\(3\)](#) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) **Conformance.**

- (A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is used in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- (C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to

DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under [paragraphs \(a\)\(1\)\(iii\)\(C\)](#) and [\(D\)](#) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to [paragraph \(a\)\(1\)\(iii\)\(C\)](#) or [\(D\)](#) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iv) **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (v) **Unfunded plans.** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in [§ 5.28](#), that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (vi) **Interest.** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) **Withholding —**

- (i) **Withholding requirements.** The [write in name of Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in [paragraph \(a\)](#) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in [§ 5.2](#)). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in

construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in [paragraph \(a\)\(3\)\(iv\)](#) of this section, the [Agency] may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

- (ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with [paragraph \(a\)\(2\)\(i\)](#) or [\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:
 - (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
 - (B) A contracting agency for its reprourement costs;
 - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
 - (D) A contractor's assignee(s);
 - (E) A contractor's successor(s); or
 - (F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

(3) **Records and certified payrolls —**

(i) **Basic record requirements —**

- (A) **Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- (B) **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- (C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under [paragraph \(a\)\(1\)\(v\)](#) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- (D) **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) **Certified payroll requirements —**

- (A) **Frequency and method of submission.** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is

performed, certified payrolls to the [write in name of appropriate Federal agency] if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency]. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

- (B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under [paragraph \(a\)\(3\)\(i\)\(B\)](#) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- (C) **Statement of Compliance.** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
- (1) That the certified payroll for the payroll period contains the information required to be provided under [paragraph \(a\)\(3\)\(ii\)](#) of this section, the appropriate information and basic records are being maintained under [paragraph \(a\)\(3\)\(i\)](#) of this section, and such information and records are correct and complete;
 - (2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
- (D) **Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the

- requirement for submission of the "Statement of Compliance" required by [paragraph \(a\)\(3\)\(ii\)\(C\)](#) of this section.
- (E) **Signature.** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.
- (F) **Falsification.** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).
- (G) **Length of certified payroll retention.** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iii) **Contracts, subcontracts, and related documents.** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iv) **Required disclosures and access —**
- (A) **Required record disclosures and access to workers.** The contractor or subcontractor must make the records required under [paragraphs \(a\)\(3\)\(i\) through \(iii\)](#) of this section, and any other documents that the [write the name of the agency] or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by [§ 5.1](#), available for inspection, copying, or transcription by authorized representatives of the [write the name of the agency] or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
- (B) **Sanctions for non-compliance with records and worker access requirements.** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to [§ 5.12](#). In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.
- (C) **Required information disclosures.** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the [write in name of appropriate Federal agency] if the agency is a party to the contract, or to the Wage and Hour Division of the Department of

Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency], the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) ***Apprentices and equal employment opportunity —***

(i) ***Apprentices —***

(A) ***Rate of pay.*** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) ***Fringe benefits.*** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) ***Apprenticeship ratio.*** The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to [paragraph \(a\)\(4\)\(i\)\(D\)](#) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in [paragraph \(a\)\(4\)\(i\)\(A\)](#) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) ***Reciprocity of ratios and wage rates.*** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) ***Equal employment opportunity.*** The use of apprentices and journeymen under this part must be in conformity with the equal employment opportunity

requirements of [Executive Order 11246](#), as amended, and [29 CFR part 30](#).

- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this contract.
 - (6) **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses contained in [paragraphs \(a\)\(1\)](#) through [\(11\)](#) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the [write in the name of the Federal agency] may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.
 - (7) **Contract termination: debarment.** A breach of the contract clauses in [29 CFR 5.5](#) may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).
 - (8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR parts 1](#), [3](#), and [5](#) are herein incorporated by reference in this contract.
 - (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR parts 5](#), [6](#), and [7](#). Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
 - (10) **Certification of liability.**
 - (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
 - (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).
3. Compliance with the Copeland "Anti-Kickback" Act. - *required for construction work valued at \$2,000.00 or more*
- (1) **Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

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

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

4. Contract Work Hours and Safety Standards Act. - *required for mechanic and laborer work valued \$100,000.00 or more*

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

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

5. Clean Air Act and the Federal Water Pollution Control Act. - *required for agreements*

valued at \$150,000.00 or more

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

6. Debarment and Suspension. - *required for agreements valued \$25,000.00 or more*

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply

with these regulations in any lower tier covered transaction it enters into.

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

7. Byrd Anti-Lobbying Amendment. - *required for agreements valued at \$100,000.00 or more*

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

8. Procurement of Recovered Materials. - *required for agreements valued at \$10,000.00 or more*

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

- (i) Competitively within a timeframe providing for compliance with the Agreement’s performance schedule;
- (ii) Meeting the Agreement’s performance requirements; or
- (iii) At a reasonable price.

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

9. Prohibition on Contracting for Covered Telecommunications Equipment or Services. - *required for all*

(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.

10. Domestic Preferences for Procurements. - *required for all*

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**FAYETTEVILLE PUBLIC WORKS COMMISSION'S
MWDBE COMPLIANCE PROVISIONS**

APPLICATION:

The requirements of Fayetteville Public Works Commission (PWC) Minority, Women, and Disadvantaged Business Enterprise (MWDBE) Program for participation specific contracts are hereby made part of the Contract Documents. Copies of the Program may be obtained from:

Fayetteville Public Works Commission
Economic Inclusion Programs
P.O. Box 1089
Fayetteville, North Carolina 28302
Phone (910) 223-4016 Fax (910) 483-1429
E-mail: EIProgram@faypwc.com

NCDOT DBE Directory: www.ebs.nc.gov/VendorDirectory

HUB Directory: <https://ncadmin.nc.gov/businesses/hub>

MWDBE Compliance Requirements:

1. The Bidder shall provide, with their Bid Form, at the time bids are due, the documents set forth below, properly executed. Returning executed copies indicates and establishes that the Bidder understands and agrees to any incorporated MWDBE contract provisions.
2. All Bidders must provide with their Bid Form, at the time bids are due, a properly completed and executed copy of **either:**
 - Affidavit A – Listing of Good-Faith Efforts **OR**
 - *Affidavit B – Intent to Self-Perform with Own Workforce.

*Affidavit B should **only** be used if the Contractor will perform **ALL Elements** of the Work on this project with their own forces **AND** will complete **ALL Elements** of this project **WITHOUT** the use of subcontractors, material suppliers, or providers of professional services.
3. Upon being identified as the apparent lowest responsive, responsible Bidder, a Bidder shall, within twenty-four (24) hours of PWC's notification provide a properly completed and executed copy of **either:**
 - Affidavit C – Percentage of MWDBE Participation **OR**
 - Affidavit D – Good-Faith Efforts.
4. All Bidders must provide with their Bid Form, at the time bids are due, a properly completed and executed copy of Affidavit E- Identification of MWDBE/Local Participation Form

All written statements, certifications, or intentions made by the Bidder shall become a part of the agreement between the Contractor and Fayetteville Public Works Commission for performance of this contract.

SUBCONTRACTOR PAYMENT REQUIREMENTS:

North Carolina General Statutes 143-134.1 (N.C.G.S.) states that the percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the Fayetteville Public Works Commission to the prime contractor. Failure to comply with this provision shall be considered a breach of the contract, and the contract may be terminated in accordance with the termination provisions of the contract.

The Contractor shall provide an itemized statement of payments to each MWDBE subcontractor before final payment is processed.

The Contractor shall provide an itemized statement of payments to each NON-MWDBE subcontractor before final payment is processed.

Contractor

Signature

Printed Name

Title

Date

Affidavit A: Listing of the Good Faith Efforts

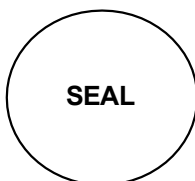
Affidavit of _____
(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

Total Available GFE Points: 155		Minimum Number GFE Points Required : 50
Points		
10	Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government-maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.	
10	Making the construction plans, specifications and requirements available for review by prospective minority businesses or providing these documents to them at least 10 days before the bid or proposals are due.	
15	Breaking down or combining elements of work into economically feasible units to facilitate minority participation.	
10	Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.	
10	Attending any pre-bid meetings scheduled by the public owner.	
20	Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.	
15	Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.	
25	Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.	
20	Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.	
20	Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.	
Total GFE Points (Claimed by Bidder):		Total GFE Points (Assessed by PWC):

In accordance with NCGS 143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Small Disadvantaged Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by any applicable statutory provision may constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the MWDBE business commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of 20____

Notary Public _____

My commission expires _____

Affidavit B: Intent to Perform Contract with Own Workforce

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for contract:

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform **all elements of the work** on this project with his/her own current workforces; and will complete all elements of this project **without** the use of subcontractors, material suppliers, or providers of professional services.

The Bidder agrees to provide any additional information or documentation requested by the Owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of 20____

Notary Public _____

My commission expires _____

Affidavit C: Percentage of MWDBE Participation

Affidavit of _____
(Name of Bidder)

I hereby certify that on contract: _____
(Name of Project)

\$ _____
(Dollar Amount of Total Bid)

I will expend a minimum of _____% of the total dollar amount of the contract with Minority, Women, and Disadvantaged Business Enterprises (MWDBE). MWDBEs will be employed as subcontractors, vendors, or providers of professional services. Such work will be subcontracted to the following firms listed below.

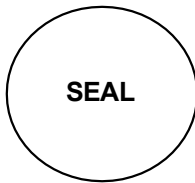
<u>Name, Address, & Phone No.</u>	<u>EIN</u>	<u>*MWDBE Category</u>	<u>NAICS</u>	<u>Dollar Value</u>	<u>% of Contract</u>

*MWDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Pursuant to NCGS 143-128.2(d), the undersigned will enter into a formal agreement with MWDBEs for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of 20____

Notary Public _____

My commission expires _____

Affidavit D: Good Faith Efforts

If Owner determines using reasonable discretion that Affidavit C is insufficient, Bidder agrees to provide the following information regarding any good-faith efforts.

<u>Name, Address, & Phone</u> <u>No.</u>	<u>EIN</u>	<u>*MWDBE</u> <u>Category</u>	<u>NAICS</u>	<u>Dollar Value</u>

*MWDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Bidder may be requested to provide documentation of the Bidder's good-faith efforts. Examples of documentation may include the following:

- Copies of solicitations for quotes to MWDBEs. Each solicitation may include a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- Copies of quotes or responses received from each firm responding to the solicitation.
- A telephone log of follow-up calls to each firm sent a solicitation.
- For subcontracts where a MWDBE is not considered the lowest responsible sub- bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- Documentation of any contacts or correspondence to MWDBE, community or contractor organizations in an attempt to meet the goal.
- Copy of pre-bid roster.
- Letter documenting efforts to provide assistance in obtaining required bonding or insurance for MWDBEs.
- Letter detailing reasons for rejection of a MWDBE due to lack of qualification.
- Letter documenting proposed assistance offered to MWDBEs in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive Bidder.

Date: _____ Name of Authorized Officer: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of 20____
Notary Public _____

My commission expires _____

Affidavit E: Identification of MWDBE/Local Participation

(Name of Bidder)

I hereby certify that on contract: _____

(Name of Project)

We will use the following Minority, Women, and Disadvantaged Business Enterprises (MWDBE), and Local (Cumberland, Hoke, Harnett County) as construction subcontractors, vendors, suppliers, or providers of professional services.

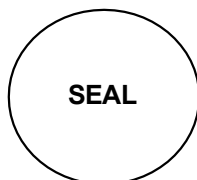
<u>Name, Address, & Phone</u> <u>No.</u>	<u>EIN</u>	<u>*MWDBE Category /</u> <u>**Local</u>	<u>NAICS</u>	<u>Dollar Value</u>

*MWDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

**Local: Fayetteville Metropolitan Statistical Area (MSA) comprising of Cumberland County, Hoke County, and Harnett County. PWC is requesting this information for reporting purposes only, and use of local entities will not be considered for compliance with the requirements of the MWDBE Program.

The total value of MWDBE/local business contracting will be \$_____

Date: _____ Name of Authorized Officer: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of 20____

Notary Public _____

My commission expires _____

**FAYETTEVILLE PUBLIC WORKS COMMISSION
MWDBE ADD / CHANGE FORM**

If a MWDBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the good faith efforts set forth in the MWDBE Program if soliciting a replacement or additional subcontractor.

For MWDBE Change Request, please provide all information below:

Prime Contractor: _____

Subcontracted Work: _____

Previous Subcontractor: _____

Reason this for change request:

New Subcontractor: _____

EIN: _____

MWDBE Category: _____

To Add MWDBE Subcontractor/Subcontracted work:

If this is a new trade being subcontracted or a subcontractor that was not documented in the original Project Bid Information submittal, then good faith efforts to solicit a MWDBE must be documented, as the original MWDBE instructions indicate. Please provide all good faith efforts below showing all the MWDBE firms contacted to perform this work along with any additional good faith efforts or evidence that there are not reasonably available firms in the work area. PWC's MWDBE Program requires that good faith efforts are to be carried out to the fullest extent practicable. If solicitations were not carried out due to being impracticable, please attach this explanation to this form.

Name, Address, & Contact Information	EIN	MBE or WBE and Certifying agency	How was this firm contacted (email, letter, or Phone) and what was the result of the solicitation? *

*Must submit copies of emails or letters. If phone calls were made this sheet can serve as documentation of calls

Date: _____ Name of Authorized Officer: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of 20____

Notary Public _____

My commission expires _____

Last Revised September 24, 2024

**SMALL LOCAL SUPPLIER / MWDBE SUBCONTRACTOR
DISCLOSURE FORM**

Contractor: _____
Address & Phone: _____
Project: _____
Name: _____
Pay Application # _____

Please complete the below form by providing the necessary information for the payments made to each subcontractor, vendor, or supplier for the work associated with the identified pay application. This form must be fully completed and attached to each pay application.

Firm Name, Address, and Contact Information	Payment Amount	Type of Work/Commodity (Include NAICS Code)

Signature

Printed Name

Title

Date

ATTACHMENT H: BID SUBMITTAL CHECKLIST

To ensure your bid is considered for evaluation and potential award, the following forms and required information must be submitted in full. Each item on this checklist must be completed and provided with your bid response. Failure to submit any required documentation or information may result in disqualification. Please carefully review the checklist to confirm all required materials are included before submitting your bid.

- ☐ 1. References (provided on page 5/6)
- ☐ 2. Subcontracting Plan Submission (provided on page 8)
- ☐ 3. Attachment B Company Information (completed and signed)
- ☐ 4. Attachment B Price Information (provided)
- ☐ 5. Attachment C (completed and signed) or Explanation (provided)
- ☐ 6. MWDBE Affidavit A or Affidavit B (completed and notarized)
- ☐ 7. MWDBE Affidavit E (completed and notarized)
- ☐ 8. Addendum 1, if applicable (acknowledged and signed)
- ☐ 9. Addendum 2, if applicable (acknowledged and signed)
- ☐ 10. Addendum 3, if applicable (acknowledged and signed)
- ☐ 11. Addendum 4, if applicable (acknowledged and signed)