



Finance

Purchasing Division
305 Chestnut Street, 5th Floor
Post Office Box 1810
Wilmington, NC 28402-1810

910 341-7830
910 341-7842 fax
wilmingtonnc.gov
Dial 711 TTY/Voice

June 8, 2020

**RE: Request for Qualification
Operations and Rate Study for Recycling & Trash Services
RFQ No.: S6-0620**

Dear Sir or Madame:

This Request for Qualification (RFQ) will provide your firm with sufficient information to enable you to prepare and submit a Statement of Qualification (SOQ) to partner with the City Staff to provide a comprehensive recommendation on the operations and rates of the Recycling & Trash Services Division of the Public Services Department.

The RFQ includes a preliminary scope of work and general terms and conditions of any subsequent contract. The scope of services, as defined herein, may be modified after final selection of the consultant. The general terms and conditions are part of any submitted response and will be incorporated into any subsequent contract. Submission shall constitute acceptance of these terms and conditions. Conditional responses may be rejected

Potential respondents should email sonya.stephenson@wilmingtonnc.gov to acknowledge receipt of the RFQ and to inform the City of its intent to respond. Provide the name, title, address, telephone, and email address of the contact person. Addenda will be posted to the City website at www.wilmingtonnc.gov.

In order for your RFQ to be considered responsive, it must adhere to the submittal requirements that follow. The successful Consultant will be selected based on the qualifications, experience and value of services provided for the available budget. Firms must be registered with the North Carolina Secretary of State or hold a Certificate of Authority to do business in the State of North Carolina.

A committee selected by the City will review the SOQs and select the most qualified firm(s) for an interview. After the most qualified firm is determined by the City, staff will enter into negotiations with the firm to better define the final scope of work. If for any reason the City and the selected firm cannot agree on a scope, term of service, or any other matter, the City will enter into negotiations with the next most qualified firm.

It is the goal of the City to promote local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the

Contractor shall make a good faith effort to identify and hire minority subcontractors for this project. A complete copy of the City's MBE/DBE policy is available at my office.

Questions concerning the proposed contract terms and conditions should be addressed to my office. I hope to receive your statement of qualification for this work.

Sincerely,

Daryle L. Parker
Purchasing Manager

Enclosure

cc: Dave Mayes, Director of Public Services
Rick Porter, Superintendent of Recycling & Trash Services

REQUEST FOR QUALIFICATION

SECTION 1

1. Project Summary:

It is the intent of the City to obtain responses from qualified firms to select a consultant to provide reports and recommendations on the following identified operations of the Recycling & Trash Division of Public Services. The City intends to enter into a contract with a consulting firm to prepare a comprehensive cost of services study including a rate study review, as well as rate recommendations for the next five (5) years (FY22-FY27). The final report will include recommendations based on a complete review and similar size city comparison of operational scope, found in the City of Wilmington Municipal Code, Chapter 10 SOLID WASTE. The City will also review qualifications and experience in commercial or municipal fleet route optimization.

- 2. DEFINITIONS:** Whenever, in these Instructions, the terms defined in the Contract are used (or pronouns used in their place), the intent and meaning of such terms shall be interpreted as indicated in the Contract.

In addition, the following definitions shall apply:

- A. Proposal means a response document submitted to the City stating the prior experience, consultant services, and/or services, as applicable, offered by the proposer to satisfy the City needs as requested in the RFQ.
- B. CITY means the City of Wilmington, NC.
- C. Contract means the Agreement between the successful Consultant(s) and the City.
- D. Goods, consultant services, and/or services, as applicable, means: The data, analysis, recommendations and reporting experience requested in the RFQ.
- E. RFQ Documents means this entire RFQ DOCUMENT, all attachments, these Instructions to Proposers and any addendums issued prior to the date and time of submittal of the Proposals.
- F. Consultant or Prospective Contractor or Proposer means any person or firm submitting qualifications for or proposing to the City as a result of this RFQ.

3. SUBMISSION OF RESPONSE:

The name and address of the prospective Consultant, and the title “**RFQ - Operations and Rate Study for Recycling & Trash Services**” shall be placed on the outside of the envelope. All items required for a responsive submission shall be included. It is the responsibility of the Proposer to ensure that the Response Package is complete and received at the proper time.

- A. EXAMINATION OF RFQ DOCUMENTS: It is the responsibility of each Proposer before submitting a response, to: a) Examine the RFQ documents thoroughly; and b) Consider and comply with all federal, state and local laws and regulations, and local conditions that may affect cost, progress, or performance of any project.

- B. EXPERIENCE: Prospective Consultants must have experience in work of the same or similar nature, similar size operations, be capable of funding such work, must provide a reference list of at least three (3) Government customers for whom they have performed similar services during the past seven (7) years, and must provide all information as specified herein.
- C. EXCEPTIONS: Prospective Consultants are advised that exceptions to any of the terms contained in this RFQ must be identified in the response to the RFQ. Failure to do so may lead the City to declare the proposal as non-responsive and may lead to the disqualification of the response.
- D. EXPENSES OF PREPARATION: The City is not responsible for any expenses which Prospective Consultants may incur in preparing and submitting responses called for in this Request for Qualifications.
- E. INTERVIEWS: The City reserves the right to conduct personal interviews or require presentations from any or all prospective Consultants prior to selection. The City will not be liable for any costs incurred by the proposer in connection with such interviews/presentations (i.e., travel, accommodations, etc.).
- F. MODIFICATION: The City reserves the right to request that the proposer modify their response to more fully meet the needs of the City, and/or to more fully describe their qualifications.
- G. ADDITIONAL INFORMATION: The Prospective Consultant shall furnish such additional information as the city may reasonably require. This includes information which indicates financial resources as well as ability to provide and maintain the services. The City reserves the right to make investigations of the qualifications of the proposer as it deems appropriate, including but not limited to a financial review and a background investigation.
- H. NEGOTIATIONS: The City reserves the right to negotiate modifications to proposals that it deems acceptable, reject any and all responses, and to waive minor irregularities in the procedures.
- I. ADDENDUM: If it becomes necessary to revise or amend any part of the Request for Qualifications, the City will furnish the revision by written Addendum to all prospective Consultants known to the City, who received an original Request for Qualifications. Addendums will also be posted on the City's website and may be obtained by visiting www.wilmingtonnc.gov.

It will be the responsibility of the respondent to contact the City prior to submitting a response to ascertain if any addendum have been issued, to obtain all such addendums, and to return executed addenda with the response. **Failure to include signed Addendum Acknowledgement with the response may be grounds for submittal being non-responsive.**

RFQ RESPONSE TIMELINE

The RFQ process shall adhere to the following schedule.

RFQ Process	Date	Time
Advertise RFQ	6/8/2020	3:00 PM
RFQ Written Questions Due	6/18/2020	5:00 PM
City Responses to RFQ Questions	6/25/2020	5:00 PM
RFQ Due Date	7/7/2020	3:00 PM
Interviews	TBD	TBD
City Council Award	8/2020	

Note: All times shown as Eastern Standard Time (EST).

PRE-PROPOSAL QUESTIONS

Questions concerning the specifications in this Request for Qualification should be directed to the Project Manager. An addendum summarizing all questions and answers will be posted to the City's website.

Project Manager for the City of Wilmington
Rick Porter
Superintendent of Recycling & Trash Services
Email: rick.porter@wilmingtonnc.gov
Phone: 910-341-0081

SUBMITTAL REQUIREMENTS

Statements of Qualifications must follow the format as defined in the section marked “SOQ.”

Statement of Qualification should be limited to 30 pages or less, inclusive of cover page. Please use 8 ½” x 11” sheets, single spaced, one sided with no less than 12 point font. Respondents must submit one (1) signed original and five (5) copies plus one (1) electronic version of the “RFQ No. S6-0620 Operations and Rate Study for Recycling & Trash Services” SOQ. The electronic version of the SOQ must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a Compact Disc-Read Only Memory (CD-ROM) disc or USB drive attached to the SOQ. SOQ must be enclosed in a sealed envelope or package and clearly marked: “RFQ No. S6-0620 Operations and Rate Study for Recycling & Trash Services.” Both hard copy and electronic version must be received by the City on or before **3:00 PM, Tuesday, July 7, 2020**. Deliver SOQs to the following mailing / physical address:

City of Wilmington
Attention: Daryle L. Parker, Purchasing Manager
305 Chestnut St. 5th Floor
Wilmington, NC 28401

SOQs received after the “RFQ Due” deadline above will not be considered and will be returned unopened to the return address on the submission envelope. The outside of the submittal package and the CD-ROM/USB must be clearly marked. The City reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFQ that cannot be met must be indicated in the statement of qualification. CONSULTANTS must respond to the entire Request for Qualification (RFQ). Any SOQs received by the City that are incomplete in their responses will be immediately disqualified.

Responses shall be organized and sections tabbed in the following order.

All responses shall include at a minimum:

TITLE PAGE: Show the name of consultant’s firm, address, telephone number, email, name of contact person, date, and the subject: **Operations and Rate Study for Recycling & Trash Services**

TABLE OF CONTENTS: Include a clear identification of the material by tab and by page number.

Tab 1 - Consultant’s Introduction and Submittal Letter

- A. Submittal Letter signed by an authorized agent of the Prospective Consultant.
- B. A proposal statement setting forth in detail how the firm qualifications and experience meet the response requirements and evaluation factors.
- C. Organizational structure and locations of business with ownership interests

Tab 2 – Statement of Firm Qualifications

Provide a description and history of the firm, including any of the following deliverables, for at least 3 municipal clients. Include the initial cost forecast and the final/actual cost of each project.

A. **Rate Study** – List experience in preparing a comprehensive cost of services study and billing rate model(s) for municipal clients. Include any experience on the following specifics:

- 1) Cost of service analysis for services provided and each of the waste streams collected and disposed of by the municipality.
- 2) Current and future cost of providing services in accordance with established and anticipated standards and regulations. A final product with the ability to update data inputs annually or as needed is preferred.
- 3) Funding of all anticipated or recommended operation, maintenance, and capital costs.
- 4) Funding requirements of all current and anticipated long-term liabilities and debt obligations.
- 5) Age and condition of infrastructure and equipment and the need to fully fund long-term capital improvement, replacement and expansion related infrastructure and equipment.
- 6) Third party billing and collections.
- 7) Ability of rate structure to be easily understood and administered.
- 8) Equity of rates between customer classes for different types of services provided, and types of waste disposed.
- 9) Service fee structure.
- 10) Stable and predictable revenue stream for the operations.
- 11) Alternative revenue sources.
- 12) Recommended enterprise-fund reserve amounts.
- 13) Interaction with City Council and/or the Public.

B. **Operations Analysis** - Detail experience in analyzing and making recommendations for municipal clients.

- 1) Specialized department services (non-trash) and operational scopes. For example:
 - a. Yard debris collection and disposal - service variables including frequency, per use charge, volume or size limitations, etc.
 - b. Recycling – recommendations based on maximizing diversion and minimizing disposal costs.
 - c. Disaster response
 - d. Bulky collections
 - e. Metal collection
 - f. Municipal codes of ordinance which structure services
- 2) Operations logistics examples:
 - a. Customer/Municipal Growth
 - b. Automated collection
 - c. Electric vehicles/charging
 - d. Appointment (non-repetitive) routing
 - e. Process monitoring and improvement
 - i. Data Collection
 - ii. Performance Metrics
 - iii. Benchmarking
 - f. Use of supplemental temporary labor

C. **Route Optimization** - provide a history of optimizing a municipal fleet routing system that includes, at a minimum: 1) enables the development of an equitable workload for route drivers 2) improves customer service and production efficiencies, 3) provides maps and travel direction reports of the new routes, and 4) minimizes the number of customers that will require a service day change.

Tab 3 - Technical Approach and Response Time Commitment

- A. City of Wilmington prefers that the proposer comment on the ability to start the project promptly after July 1, 2020 and consider that rate change recommendations will be required for City Council and budget submittal in early January 2021.

Tab 4- Key Personnel

- A. Include a listing of key staff including resumes for each describing experience, training, and education in the required services. Identify staff experience working with governmental entities and list those projects.

Tab 5- Proposed Subcontractors

Include a listing of proposed subcontractors. Delineate those subcontractors who are Disadvantaged Business Enterprises in accordance with and as defined in 2 CFR 200.321.

RIGHTS TO SUBMITTED MATERIALS

All statements, responses, inquiries, or correspondence relating to or in reference to this RFQ, and all reports, charts, and other documentation submitted by Proposers (other than materials submitted as and qualifying as trade secrets under North Carolina law) shall become the property of the City when received and the entire SOQ shall be subject to the public records laws of the State of North Carolina except where a proper trade secrets exception has been made by the Proposer in accordance with the procedures allowed by North Carolina Law and marked in bold **“Confidential.”**

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Proposer of the conditions contained in this Request for Qualifications.

STATEMENT OF QUALIFICATIONS (SOQ)

Requirements for Statement of Qualifications (SOQ)

Please submit a complete Statement of Qualifications responding to all the required information requested. Incomplete SOQs will be considered non-responsive and subject to rejection.

The cover letter shall be addressed to Mr. Daryle L. Parker, Purchasing Manager. It may be up to two (2) pages (which do not count toward the 30-page maximum) and, at a minimum, must contain the following:

EVALUATION CRITERIA

This is not a bid. There will not be a public bid opening. SOQs will be evaluated based on, but not necessarily limited to, the following criteria:

The evaluation criteria define the factors that will be used by the evaluation committee to evaluate and rank responsible and qualified firms. Prospective consultants shall include sufficient information to allow the evaluation committee to thoroughly evaluate their qualifications. Each response submitted shall be evaluated and ranked by an evaluation committee. A contract will be negotiated with the most qualified consultant per the evaluation team.

Qualifications of the Consultant and consultant's staff

- Number of years of experience consulting with municipal recycling and trash operations: City of Wilmington strongly prefers the proposing company and/or predecessors have at least five (5) years of experience in this field; more preferred.
- Number of similar projects: City of Wilmington strongly prefers the proposing company and/or predecessors having completed at least 3 similar projects in the last ten (10) years; more preferred.
- Background in handling similar size projects: City of Wilmington strongly prefers the proposing company having successfully completed project(s) involving a minimum of 30,000 customers.
- Degree of experience in all areas of solid waste and recyclables management, including fleet management, rate and financial analysis, municipal operations and civil codes, strategic short and long term planning, and new or developing waste industry technologies.
- Proof of satisfactory or better performance on contracts of similar scope and size: references and letters of reference must verify successful completion of similar projects.
- In house client training capabilities.
- Assurance of dedicated project team.
- Experience of key team members in area identified under experience of prospective consultant: identify senior and project management.
- Education and experience of prospective consultant personnel: provide brief resumes.

Response Time Projection

- City of Wilmington prefers that the proposer demonstrate the ability to start the project promptly after July 1, 2020 and acknowledge that rate change recommendations will be required for budget submittal in early January 2021.

Technical Approach

- Consultant revenue and expense analysis process; and the forecasting process for possible/recommended operational modifications
- History of comparison to similar municipalities and operations.

References

FINAL SELECTION

Procurement of the Design CONSULTANT will be made in accordance with the provisions of N.C.G.S. § 143-64.31 which requires that firms be selected on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee. A team, comprised of City staff, will be responsible for the SOQ's evaluations. This team, in accordance with the criteria listed above, will evaluate all SOQs received as specified. The City team members, in applying the major

criteria to the SOQs, may consider additional sub-criteria beyond those listed, as may come to light through the review of the various SOQs. During the evaluation period, the City of Wilmington reserves the right to interview the top selected firms or all the proposing firms. The City's final selection will be the firm which, in the City's opinion, is the most responsive and responsible firm, that demonstrates the most competence and qualification for this service, and is in the City's best interest. The City maintains the sole and exclusive right to evaluate the merits of the SOQs received.

Firms will be objectively evaluated based on their responses to the project scope outlined in the RFQ. The written SOQ should clearly demonstrate how the firm could best satisfy the requirements of City.

The City reserves the right to make an award without further discussion of the SOQ submitted. The City shall not be bound or in any way obligated until both parties have executed a contract. The City also reserves the right to delay the award of a contract or to not award a contract.

The general conditions and specifications of the RFQ and the selected SOQ, as amended by agreement between the City and the CONSULTANT including e-mail or written correspondence relative to the RFQ, may become part of the contract documents. Failure of the CONSULTANT to perform as represented may result in elimination of the CONSULTANT from competition or in contract cancellation or termination.

4. **ORAL PRESENTATION:** An oral presentation of the response may be requested of any Prospective Consultant at the Evaluation Committees discretion. Consultants are cautioned not to assume that presentations will be required and should include all pertinent and required information in their original qualifications package.
5. **COSTS INCURRED BY PROPOSERS:** All expenses involved with the preparation and submission of responses to the City, or any work performed in connection therewith, shall be borne solely by the Prospective Consultants. No payment will be made for any responses received, or for any other effort required of, or made by, Prospective Consultants in responding to this RFQ.

PROPOSER'S CERTIFICATION

Proposer's Signature:

Date: _____

By signing above, I certify that I have carefully read and fully understand the information contained in this RFQ; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Request for Qualifications being submitted and have the authority to sign Statement of Qualification on behalf of my organization. **It is the offeror's responsibility to assure that all addenda have been reviewed prior to proposal submission.**

BY (Printed): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

The proposer supplies the information recorded below for use in the preparation of the contract documents, in event of contract award:

1. Please indicate type of business organization:

(a) Proprietorship _____

(b) Partnership _____

(c) Corporation _____

(d) Limited Liability Co. _____

2. If business is a Corporation, please answer the following questions:

Name and title of officers, authorized by Corporate Resolution, who will execute the contract on behalf of corporation (generally President and Secretary).

Firm is incorporated in which state?

If firm is a foreign corporation, does firm have a Certificate of Authority from the North Carolina Secretary of State? _____

3. If business is a Partnership, please answer the following:

Name in full or all general partners and addresses:

Is this a limited or general partnership? _____

If a limited partnership, which state is it registered? _____

If business is a foreign limited partnership, does business have a Certificate of Authority from the North Carolina Secretary of State? _____

4. If business is a Proprietorship, please answer the following:

Name of owner: _____

5. If business is a limited liability company, please answer the following:

List the names and title of managers or member-managers who will execute the contract on

behalf of the company?

Which state is it organized? _____

If business is a foreign limited liability company, does business have a Certificate of Authority from the North Carolina Secretary of State? _____

6. For all bidders:

If the business operates under an assumed name, what is the assumed name?

Has a certificate of assumed name been filed in the New Hanover County Registry?

If so, please provide the recording information: Deed Book _____ at Page

NON-COLLUSION AFFIDAVIT

RFQ No. S6-0620

CITY OF WILMINGTON

State of North Carolina

County of New Hanover

_____, being first duly sworn, deposes and says that:

1. He/She is the _____ (title) of _____ (firm's name), the responder that has submitted the attached response;

2. He/She is fully informed respecting the preparation and contents of the attached response and of all pertinent circumstances respecting such response;

3. Such response is genuine and is not a collusive or sham response;

4. Neither the said responder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other responder firm or Person to submit a collusive or sham response in connection with the contract for which the attached response has been submitted or to refrain from responding in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other responder, firm or person to fix the price or prices in the attached response, if applicable, or of any other responders, or to fix any overhead, profit or cost element of the response price of the response, if applicable, of any other responder or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Wilmington or any person interested in the proposed contract.

Signature: _____

Title: _____

Date: _____

NOTARIZE

Subscribed and sworn to before me,

This _____ day of _____, 20____ (NOTARY SEAL)

Notary Public _____

My Commission Expires: _____

CONTRACTUAL REQUIREMENTS & TERMS AND CONDITIONS

The following terms and conditions apply to this *Request for Qualification* solicitation process, and will be incorporated into the resulting contract as applicable. Please note that any exceptions to the following requirements, as well as other sections of this *Request for Qualification*, should be addressed in a separate section of the Respondent's proposal.

INSURANCE

A. Commercial General Liability

1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTS, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
3. The City of Wilmington, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 **AND** CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of Wilmington, its officers, officials, agents, and employees.
4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
5. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
6. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of Wilmington.

B. Workers' Compensation and Employer's Liability

1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit.
3. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of Wilmington.

4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

C. Business Auto Liability

1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.
2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
5. CONSULTANT waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
6. The CONSULTANT's Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

D. Professional Liability Insurance

1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000 per claim.
2. If coverage required in paragraph 1 above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

E. Deductibles and Self-Insured Retentions

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of Wilmington is an insured under the policy.

F. Miscellaneous Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of Wilmington, PO Box 1810, Wilmington, NC 28402-1810.
2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of Wilmington.

H. Evidence of Insurance

1. The CONSULTANT shall furnish the City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of Wilmington with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

I. Subcontractors

CONSULTANT shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all subcontractors are properly insured.

J. Conditions

1. The insurance required for this contract must be on forms acceptable to the City of Wilmington.
2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONSULTANT without prior written approval of the City of Wilmington.

3. The CONSULTANT shall promptly notify the Safety & Risk Manager at (910) 341-5864 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
4. The City of Wilmington reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
5. Failure of the City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
6. By requiring insurance herein, the City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the City of Wilmington in this contract.
7. The City of Wilmington shall have the right, but not the obligation of prohibiting CONSULTANT or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of Wilmington.

INDEMNIFICATION/ LIMITATION OF LIABILITY

Release and Indemnity. To the fullest extent permitted by law, CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, directly or indirectly, any negligent, reckless, or intentional act or omission of CONSULTANT (or by any subcontractor, agent, employee, or other person or entity for which the CONSULTANT is liable or responsible). Upon a finding of fault that the damage or injury alleged was proximately caused by the CONSULTANT as described above, the provisions of this Section shall include any claims for equitable relief or for damages against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs, and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials, and employees, in connection with investigating and defending any action, and shall also include reasonable attorneys' fees. CONSULTANT expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONSULTANT shall in no way limit CONSULTANT's responsibility to release, indemnify, keep and save harmless the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

CITY Not Liable for Special or Consequential Damages. The CITY shall not be liable to the CONSULTANT, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the CITY, or any other consequential, indirect or special damages or lost profits related to this Contract.

ASSIGNMENT

No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

COMPLIANCE WITH LAWS

Other Laws: CONSULTANT will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C.G.S. §132-1.10 and §75-65.

Public Records. CONSULTANT acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C.G.S. § 132) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

If CONSULTANT believes documents related to the Agreement contain trade secrets or other proprietary data, CONSULTANT must notify the CITY and include with the notification a statement that explains and supports CONSULTANT's claim. CONSULTANT also must specifically identify the trade secrets or other proprietary data that CONSULTANT believes should remain confidential.

In the event the CITY determines it is legally required to disclose pursuant to law any documents or information CONSULTANT deems confidential trade secrets or proprietary data, the CITY, to the extent possible, will provide CONSULTANT with prompt written notice by certified mail, fax, email, or other method that tracks delivery status of the requirement to disclose the information so CONSULTANT may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for CONSULTANT to seek court ordered protection or other legal remedies as deemed appropriate by CONSULTANT. If CONSULTANT does not obtain such court ordered protection by the expiration of said time period, the CITY may release the information without further notice to CONSULTANT.

CONSULTANT REPRESENTATIONS AND WARRANTIES

Independent CONSULTANT. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent CONSULTANT and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its

business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

Non-Discrimination. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.

Interpretation/Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.

ACKNOWLEDGEMENTS

Authority to Act/IDA Certification. Each of the persons executing this Agreement on behalf of CONSULTANT does hereby covenant, warrant and represent that the CONSULTANT is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the CONSULTANT has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONSULTANT is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147, CONSULTANT shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

Conflict of Interest. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that CITY reserves all immunities, defenses, rights or actions arising out of CITY's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of CITY's entry into this Agreement.

Saving Clause. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.

Non-Waiver of Rights. It is agreed that the CITY's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

Non-Appropriation. In the event no CITY funds or insufficient CITY funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the CITY will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the CITY as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the CITY of any kind whatsoever.

Minority Business Enterprise (MBE). The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions the procurement of goods, services in connection with construction projects for minority owned business enterprises.
2. Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to insure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the

basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is complied with.