

**NEW HANOVER COUNTY
REQUEST FOR BIDS
PRE-POSITIONED GENERATORS
RFB # 22-0594**



COUNTY COMMISSIONERS

**JULIA OLSON-BOSEMAN, CHAIR
DEB HAYS, VICE-CHAIR
JONATHAN BARFIELD, JR.
BILL RIVENBARK
ROB ZAPPLE**

CHRIS COUDRIET, COUNTY MANAGER

Section 1 – Advertisement

**NEW HANOVER COUNTY
REQUEST FOR BIDS
PRE-POSITIONED GENERATORS
RFB # 22-0594**

Bids addressed to Sara Warmuth, Chief Facilities Officer, 200 Division Drive, Wilmington, NC 28401 and marked “**RFB # 22-0594 PRE-POSITIONED GENERATORS**” will be accepted until **3:00 P.M. EST, Friday, June 3, 2022.**

New Hanover County is requesting bids for the rental of pre-positioned generators. Services are requested to be utilized in the event of an emergency for the duration of the emergency. A reliable power supply is essential during an emergency to ensure New Hanover County’s ability to sustain services to residents.

Bids may also be emailed to: swarmuth@nhcgov.com. Deadline for receipt of Bids via email is **3:00 P.M. EST, Friday, June 3, 2022.**

Instructions for submitting bids and complete requirements and information may be obtained by visiting the County’s website at <https://finance.nhcgov.com/purchasing-solicitation/open-and-closed-bids/> or by contacting Sara Warmuth at swarmuth@nhcgov.com.

New Hanover County reserves the right to accept or reject any or all Bids and to make the Award which will be in the best interest of the County.

Released: May 13, 2022

Section 2 – Instructions and General Conditions

2.1 – Schedule

Date	Action
May 13, 2022	RFB issued.
Wednesday, May 18, 2022, at 12:00 pm	Deadline for questions. All questions must be submitted in writing to Sara Warmuth, Chief Facilities Officer (swarmuth@nhcgov.com).
Friday, May 20, 2022	Questions will be answered via written addendum.
Friday, June 3, 2022, at 3:00pm	Deadline for receipt of bids.

2.2 – Preparation of Bid

2.2.1 Bidders are instructed to submit their bid in a sealed envelope clearly marked “**RFB # 22-0594 PRE-POSITIONED GENERATORS**” Bids may also be emailed to: swarmuth@nhcgov.com.

2.2.2 The bid shall be submitted by **3:00 P.M. EST, Friday, June 3, 2022**, and addressed to:

New Hanover County
Facilities Management
Attn: Sara Warmuth, Chief Facilities Officer
200 Division Drive
Wilmington, NC 28401

Or Send your Bid via email to: swarmuth@nhcgov.com

2.2.3 **Completion of Bid Form (Price Sheet):** Bidders are expected to examine the specifications herein, the schedule and all instructions. Failure to do so will be at the bidder’s risk. Each bidder shall furnish the information required on the price sheet and exhibits(s). Bids **must** be submitted on the price sheet and exhibit A contained in this bid package. Bids submitted that are not on the attached price sheet and exhibits will be rejected. **BIDS NOT SIGNED WILL BE DEEMED NONRESPONSIVE AND REJECTED.**

All prices and notations shall be written in ink or typed. Discrepancies between words and numerals will be resolved in favor of words.

Changes or corrections made in the bid must be initialed by the individual signing the bid. No corrections will be permitted once bids have been opened.

2.2.4 No telephone or facsimile bids will be considered. Bids received after the time and date for closing will not be considered.

2.3 – Site Visit

There will be no pre-bid meeting and/or site visit.

2.4 – Questions

Questions concerning the specifications in this Request for Bids (RFB) should be directed to the Sara Warmuth, Chief Facilities Officer at swarmuth@nhcgov.com. Questions will be received until **Wednesday May 18, 2022, at 12:00 pm**. An addendum summarizing all questions and answers will be posted to the County’s website. Bidders who have notified the County of their intent to submit a bid along with the email address will be sent the addendum upon posting.

2.5 – Communication

Bidders may not have communications, verbal or otherwise, concerning this RFB with any personnel or boards from New Hanover County, other than the person listed in this section which is Sara Warmuth, Chief Facilities Officer email swarmuth@nhcgov.com. If any vendor attempts any unauthorized communication, the bid may be rejected.

2.6 – Intent to Submit

All Bidders who intend to submit a bid on this project should send an email to swarmuth@nhcgov.com including pertinent contact information. Upon receipt of this notification, most recent building plan will be shared with you, if desired. This will also ensure that you receive any addenda issued for this RFB; if applicable.

2.7 - Cost of Preparation of Response

Costs incurred by prospective Bidders in the preparation of the response to this Request for Bids are the responsibility of the Bidder and will not be reimbursed by The County.

2.8 – Bid Opening

Bids will not be opened publicly. The bid deadline is **Friday, June 3, 2022, at 3:00 pm**.

2.9 – Award

Award “shall be made to the lowest responsive responsible bidder taking into consideration quality, performance, and the time specified in the bid for the performance of the contract.”

The County may also consider other factors such as past performance, financial stability, and availability of equipment in the consideration of award.

2.10 - Execution of Agreement

The successful Bidder will be required to enter into a formal agreement that is consistent with the bid requirements outlined within. The successful Bidder to whom the Contract is awarded by the County shall within five (5) business days after notice of award and receipt of Agreement from the County, sign and deliver to the County all required copies of said Agreement.

2.11 – Ownership of Documents

All bids and accompanying documentation will become the property of New Hanover County at the time the bids are opened and as such will not be returned to the bidder.

2.12 - Trade Secret Confidentiality

Upon receipt of your bid by New Hanover County, your bid is considered a public record except for material which qualifies as "trade secret" under N.C. General Statute 132-1.2. After opening, your bid will be provided to County staff and others who participate in the evaluation process, and to members of the general public who submit public records requests.

To properly designate material as trade secret under these circumstances, each Bidder must take the following precautions: (a) any trade secrets submitted by a Bidder must be submitted in a separate, sealed envelope marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating This Bid," and (b) the same trade secret/confidentiality designation must be stamped on each page of the trade secret materials contained in the envelope.

Do not attempt to designate your entire Bid as a trade secret, and do not attempt to designate pricing information as a trade secret. Doing so will result in your Bid being disqualified.

In submitting a Bid, each Bidder agrees that the County may reveal any trade secret materials contained in such response to all County staff and County officials involved in the selection process, and to any outside consultant or other third parties who assist the County in the selection process. Furthermore, each Bidder agrees to indemnify and hold harmless the County and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material, which the Bidder has designated as a trade secret.

2.13 - Withdrawal of Bids

Bidders may withdraw or withdraw and resubmit their bid at any time prior to the closing time for receipt of bids. NO bid may be withdrawn after the scheduled closing time for receipt of bids for a period of ninety (90) days.

2.14 - Equal Opportunity

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

The Bidder agrees not to discriminate against any employees or applicant for employment because of physical or mental handicap in regard to any position for which the employees or applicant is qualified. The Bidder agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

Pursuant to GS 143-48, New Hanover County encourages small, minority, physically handicapped, and women firms to submit bids in response to this RFB.

2.15- Indemnity

The successful Bidder shall indemnify and hold the County, its agents and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, on account of personal injuries or death or on account of property damages arising out of or relating to the work to be performed by the Successful Bidder hereunder, resulting from the negligence of or the willful act or omission of the Bidder, his agents, employees and subcontractors.

2.16 – E-Verify

Pursuant to Session Law 2013-418, Contractor shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. County requires an affidavit attesting to Contractor's compliance. Violation of the provision, unless timely cured, shall constitute a breach of contract.

2.17 - Insurance

Before commencing any work, the Bidder shall procure insurance in the Bidder's name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed in this Agreement. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by the Bidder, his agents, representatives, employees, or subcontractors, whether such operations are done by himself/herself or anyone directly or indirectly employed by him/her.

Limits of insurance required are detailed in the attached Draft Contract.

2.18 - Addendum

The bid package constitutes the entire set of instructions to the bidder. The County shall not be responsible for any other instructions, verbal or written, made by anyone. Any changes to the specifications will be in the form of an Addendum which will be sent to all known Bidders who are listed with the Finance Office and posted on the County's website.

You may visit our website at <https://finance.nhcgov.com/purchasing-solicitation/open-and-closed-bids/>, or email swarmuth@nhcgov.com to check for the issuance of any addenda before submitting your bid.

2.19 - Compliance with Bid Requirements

Failure to comply with these provisions or any other provisions of the General Statutes of North Carolina will result in rejection of bid/bid.

2.20- Successful Bidder

The successful Bidder who is not currently registered as a vendor in the County's vendor database will be required to register. Please visit the County's website at [Vendor Self Service \(munisselfservice.com\)](http://munisselfservice.com). For questions, contact David Maurizzi at 910-798-7192 or email dmaurizzi@nhcgov.com.

2.21 – Federal Uniform Guidance

If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2CFR § 200.324); Domestic Preference Clause (2 C.F.R. 200.322) and Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. **Refer to Section 3 for Complete Details.**

2.22– Estimated Activation Period

The Bidder shall be prepared to sign a contract within five (5) business days of bid award. Services must begin within ten (10) days of receipt of the fully executed contract and either purchase order or notice to proceed, and to continue until services are completed.

2.23– Term and Time/Completion Schedule

Work will commence upon issuance of a purchase order or notice to proceed and will continue until services are completed. All work must be completed prior to June 30, 2023.

2.24 - Right to Reject Bids

New Hanover County reserves the right to accept or reject any or all bids and to make the award which will be most advantageous to the County.

2.25 – Draft Contract

A draft contract is attached for review by the Bidder.

Section 3 – Federal Uniform Guidance Requirements

- I. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- II. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- III. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- IV. Access to Records. The following access to records requirements apply to this contract:
 - a. The Contractor agrees to provide County, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. The Contractor agrees to provide the federal agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
 - d. The County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency Administrator or the Comptroller General of the United States.
- V. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to

pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- VI. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- VII. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- VIII. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- IX. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- X. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must 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 must 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 non-Federal award.
- XI. Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- XII. Program Fraud and False or Fraudulent Statements or Related Acts. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this contract.
- XIII. Federal Government Hold Harmless. This Agreement is made upon the express condition that the United States of America, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or property of the Permittee, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Permittee in connection herewith, and the Permittee hereby covenants and agrees to indemnify, defend, save and hold harmless the United States of America, its agents and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

- XIV. Domestic Preference Clause. Pursuant to 2.C.F.R. 200.322 Contractor, as appropriate and to the extent consistent with law, should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including but not limited to iron, aluminum, steel, cement and other manufactured products.
- XV. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) 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 of any system;
- (ii) (Enter into, extend, or renew 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 of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, 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.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

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

b. 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.

(2) By necessary implication and regulation, the prohibitions also do not apply to: a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(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 recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(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), in all subcontracts and other contractual instruments.

Section 4 – Scope of Services

1.0 GENERAL

- 1.01 The BIDDER shall comply with all applicable Federal, State and Local codes, ordinances and requirements of all agencies having jurisdiction. The BIDDER will be responsible for obtaining all necessary licenses to complete the scope of work.
- 1.02 Performance: The quality of workmanship concerning the services provided for automotive body repair and painting must reflect professional work and conduct.

2.0 SCOPE OF SERVICES

New Hanover County is requesting bids for the rental of pre-positioned generators. Services are requested to be utilized in the event of an emergency for the duration of the emergency. A reliable power supply is essential during an emergency to ensure New Hanover County's ability to sustain services to residents.

Bidders shall quote the rental price for the various equipment based on a two-week (14 days) rental period. Bidders shall also quote a subsequent rental period of an additional two weeks (14 days).

The County desires that the pre-selected units be delivered to the County sites within twenty-four (24) hours of request. Bidder shall state the minimum notification period for delivery of equipment for subsequent rental period. County will specify locations for delivery of equipment at the time the equipment is ordered. All generators are to be individually trailer mounted. It is the expectation that generators will be relocated during the emergency event by Contractor on an as needed basis.

The Bidder shall quote the cost to provide a service technician to stay the duration of the emergency event and provide the County maintenance/repair, operational duties, and technical expertise for the rented generators. This technician shall be equipped with all needed tools, cables, cam-type electrical connections, etc. It is the expectation of the County that the technician will connect the generators to specific buildings on an as needed basis.

All generators to be powered by diesel fuel and shall be delivered with a minimum of quarter of a tank of fuel.

The County will not allow brokering of the equipment. Potential bidders who do not own their equipment are not qualified to bid.

The following list of generators are to be supplied:

1. 50kw – 4
2. 100kw – 3
3. 150kw – 2
4. 300kw – 2
5. 350kw
6. 400kw
7. 800kw

Contract period will be July 1, 2022, through June 30, 2023, renewable for four (4) additional one (1) year periods through June 30, 2027.

3.0 PRICE SCHEDULE

3.1 The contract will be based upon estimated cost to perform the work as outlined in the Scope of Services. Prices proposed by the bidder shall include anything necessary to complete the work including mobilization, insurance, labor, equipment, fuel, overhead, profit, permits and applicable taxes, if any. No minimum or maximum quantity is implied or inferred by this contract.

3.2 All bids must be submitted using the attached Price Sheet/Bid Form.

4.0 BIDDER SAFETY REQUIREMENTS

4.1 BIDDER shall comply with all local, state and federal safety rules and regulations.

4.2 The BIDDER shall be solely responsible for maintaining safety at all work sites. The BIDDER shall take all reasonable steps to insure safety for both workers and visitors to include traffic control.

5.0 OTHER LAWS AND REGULATIONS

BIDDER will comply with any and all applicable federal, state and local standards, regulations, laws, OSHA and all health and safety regulations.

Section 5– Bid Sheet

**NEW HANOVER COUNTY
PRE-POSITIONED GENERATORS
Price Sheet/Bid Form
RFB # 22-0594**

TO: Sara Warmuth, Chief Facilities Officer
New Hanover County
Facilities Management
200 Division Drive
Wilmington, NC 28401

DATE: _____ CONTRACTOR: _____

OFFICE PHONE: _____ CELL PHONE: _____

ADDRESS: _____

EMAIL ADDRESS: _____

UNIT PRICE BID: The undersigned, having carefully examined the Instructions to Bidders, New Hanover County RFB # 22 –0594 – PRE-POSITIONED GENERATOR, and draft contract, including the following addenda;

ADDENDUM # _____ DATED: _____

As well as the premises and conditions affecting the work, proposes to furnish all services, labor, materials and equipment called for to complete the project in accordance with the contract documents for the following unit price amounts.

The following list of generators are to be supplied:

1. 50kw – 4
2. 100kw – 3
3. 150kw – 2
4. 300kw – 2
5. 350kw - 1
6. 400kw- 1
7. 800kw- 1

Initial Two-Week Rental Price for All Equipment (Include Delivery, Pickup, and Relocation Cost in this Quote): _____

Subsequent Two Week Rental Price for All Equipment (Include Delivery, Pickup, and Relocation Cost in this Quote): _____

Minimum Amount of Notice Required for Subsequent Rental Period: _____

Daily (24 hour) Rate for Onsite Technician: _____

Signature

Title

State of Incorporation

Section 6 – Forms

Statement of Assurances and Compliance

(To be submitted with all bids)

NEW HANOVER COUNTY

PRE-POSITIONED GENERATORS

STATEMENT OF ASSURANCES AND COMPLIANCE

The undersigned, as bidder certifies that the General Conditions and Instructions to Bidders, the Draft Contract, the Scope of Work and the Price Sheet/Bid Form found in the bidding documents have been read and understood.

The bidder hereby provides assurance that the firm represented in this bid, as indicated below:

- 1) Will comply with all requirements, stipulations, terms, and conditions as stated in the bid document:
- 2) Currently complies with all applicable State and Federal Laws:
- 3) Is not guilty of collusion with the vendors possibly interested in this bid or in determining prices to be submitted: and
- 4) Such agent as indicated below is officially authorized to represent the firm in whose name this bid is submitted.

Name of Firm

Name of Firm Representative

Title

Address of Firm

Telephone Number

Date

State of Incorporation

Minority & Women Business Enterprise (MWBE) Program

(To be submitted with all bids)

A. Authorized Representative

I HEREBY AFFIRM THAT:

I am [name] _____, [title] _____,
and the duly authorized representative of [Business Name] _____
and that I possess the legal authority to make this statement on behalf of myself and the
Business for which I am acting.

B. Affirmation Regarding MWBE Program Acknowledgement and Compliance

I FURTHER AFFIRM THAT:

I am aware of and intend to comply with the County's MWBE Program. As such [check one]:

_____ The Business is certified as a woman- or minority-owned business by an accepted
agency. (Attach proof certification)

_____ The Business is a woman- or minority-owned business but has not been certified by an
accepted agency. (Attach document of ownership such as articles of incorporation, current
business license, K-1 of the most recent business tax return.)

_____ The Business is not a woman- or minority-owned business; however, the bidder
acknowledges the MWBE policy and if it should become necessary to subcontract some portion
of the work at a later date or obtain materials or services in conjunction with this
solicitation, the bidder will institute good faith efforts to comply with all requirements of the
MWBE program in providing equal opportunities to MWBEs.

Signature: _____

Date: _____

Certification Regarding Lobbying

(To be submitted with all bids or offers exceeding \$100,000; must be executed prior to Award)

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:
(Bidder)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

Date

Signature of Bidder's Authorized Official

Printed Name and Title of Contractors Authorized Official

(To be submitted with all bids)

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
LOWER TIER COVERED TRANSACTION**

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) The prospective Bidder/Contractor also certifies by submission of this bid or bid that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or bid.

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

Date

Signature of Bidder's Authorized Official

Printed Name and Title of Contractors Authorized Official

STATE OF NORTH CAROLINA

AGREEMENT

NEW HANOVER COUNTY

THIS CONTRACT made and entered into this _____ day of _____ 2022 by and between **NEW HANOVER COUNTY**, a political subdivision of the State of North Carolina, hereinafter referred to as "County"; and _____, a _____, hereinafter referred to as "Contractor."

WITNESSETH:

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the County as follows:

1. Scope of Services Contractor shall provide generator rentals and service for New Hanover County facilities in the event of a disaster or emergency as more fully described in Exhibit A, attached hereto, and incorporated herein by reference.

2. Time of Performance. The terms of this Agreement shall begin July 1, 2022, through June 30, 2023, and may be renewed under the same terms and conditions for four (4) additional one (1) year options upon written notice by County.

3. Payment. County hereby agrees to pay for the cost of this Contract not to exceed a sum of _____ (\$_____) Dollars. Payment is contingent upon a final County inspection and acceptance of work or services.

4. Extra Work. County and Contractor shall negotiate and agree upon the value of any extra work or services prior to the issuance of a County Change Order or Renewal/Amendment (CRA) form covering said extra work or services. Such Change Order or CRA shall set forth the corresponding adjustment, if any, to the Contract Price and Contract Time.

5. Indemnity. Contractor shall indemnify and hold County, its officers, officials, agents, and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, for any property damages, personal injuries or death arising out of, relating to, or resulting from the negligence, willful act, or omission of Contractor, its agents, employees and subcontractors in the performance of work or services.

6. Insurance. Before commencing any work or services, Contractor shall procure insurance in Contractor's name and maintain all insurance policies for the duration of the Contract of the types and in the amounts listed in this Contract. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or subcontractors, whether such operations by itself or anyone directly or indirectly employed by it.

7. Minimum Scope and Limits of Insurance

7.1. Commercial General Liability

7.1.1. Contractor shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability (CUL) insurance with a total limit of not less than \$1,000,000 for each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this work or services, or the general aggregate shall be twice the required limit.

7.1.2. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 covering CGL or its equivalent and shall cover the liability arising from premises, operations, independent contractors, 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.

7.1.3. County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CGL or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and under the CUL, if any. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, officials, agents, and employees.

7.1.4. Contractor's CGL insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Contractor's insurance.

7.2. Workers' Compensation and Employer's Liability

7.2.1. Contractor shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.

7.2.2. Employer's Liability, and if necessary, CUL insurance shall not be less than \$1,000,000 for each accident for bodily injury by accident, \$1,000,000 for each employee for bodily injury by disease, and \$1,000,000 policy limit.

7.2.3. The insurer shall agree to waive all rights of subrogation against County, its officers, officials, agents, and employees for losses arising from work or services performed by Contractor for County.

7.3. Business Auto Liability

7.3.1. Contractor shall maintain applicable Business or Personal Auto Liability and, if necessary, CUL insurance with a limit of not less than \$1,000,000 each accident. Personal auto insurance may be accepted in lieu of Business Auto Insurance.

7.3.2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos used in the performance of work or services.

7.3.3. 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.

7.3.4. Contractor's Business Auto Liability insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Contractor's insurance.

7.4. Deductibles and Self-Insured Retentions

7.4.1. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, agents, or employees; Contractor shall procure a bond guaranteeing payment of deductibles or self-insured retentions.

7.4.2. Contractor shall be solely responsible for the payment of all deductibles to which all policies are subject, regardless of whether County is an insured under the policy.

7.5. Miscellaneous Insurance Provisions.

7.5.1. Any failure to comply with reporting provisions of the policies listed in this Contract shall not affect coverage provided to County, its officers, officials, agents, and employees.

7.5.2. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice has been given to County, 230 Government Center Drive, Ste. #125, Wilmington, NC 28403.

7.5.3. If Contractor'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.

7.6. 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 County has granted a specific exemption.

7.7. Evidence of Insurance

7.7.1. Contractor shall furnish County 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 or services, and thereafter upon renewal or replacement of each certified coverage until all operations under this Contract are deemed complete.

7.7.2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract.

7.7.3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to County 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.

7.8. Subcontractors. Contractor 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. CGL coverage shall include independent contractors' coverage, and Contractor shall be responsible for assuring that all subcontractors are properly insured.

7.9. Conditions

7.9.1. County may, at its discretion and with approval of Risk Management and the Finance Department, accept letters of credit or custodial accounts in lieu of specific insurance requirements.

7.9.2. Contractor shall warrant that the insurance contributing to the satisfaction of insurance requirements in this Contract shall not be canceled, terminated, or modified by Contractor without prior written approval of County.

7.9.3. Contractor shall promptly notify New Hanover County Property Management and New Hanover County Risk Management at (910) 798-7497 of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

7.9.4. County reserves the right to obtain complete, certified copies of all required insurance policies.

7.9.5. Failure of County to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of County to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

7.9.6. County does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not be deemed as a limitation of Contractor's liability under the indemnities granted to County in this Contract.

7.9.7. If Contractor fails to maintain the insurance as set forth herein, County shall have the right to purchase said insurance at Contractor's expense. Contractor agrees to reimburse County for all expenses incurred for such purchase.

7.9.8. Contractor or its agent may apply to County for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.

7.9.9. County shall have the right to prohibit Contractor or any subcontractor from performing work or services and may withhold payment until required certificates has been received and approved by County.

8. Independent Contractor. The parties mutually agree that the Contractor is an independent contractor and not an agent of the County, and as such, the Contractor shall not be entitled to any County employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

9. Default and Termination. If Contractor fails to prosecute the work or services with such diligence as will insure its completion within the Contract time, or if Contractor breaches any of the terms or conditions contained in this Contract and fails to cure said breach within two (2) days of County's mailing of Notice of Default, or otherwise fails to perform the work or services hereunder to the County's reasonable satisfaction, County may terminate this Contract forthwith. Upon termination, County may, without prejudice to an action for damages or any other remedy, take the prosecution of the work or services out of the hands of Contractor. County may enter into another Contract for the completion of the Contract or use such other methods as may be required for the completion of the Contract. County may deduct all costs of completing the Contract from any monies due or which may become due to Contractor. In the event this Contract is terminated prior to completion of the services by the Contractor, the Contractor shall be paid for work or services performed to the date of termination. In no event will the amount due Contractor in the event of termination exceed that amount set forth in this Contract. Nothing contained herein shall prevent the County from pursuing any other remedy, which it may have against Contractor, including claims for damages.

10. Termination for Convenience. County may terminate this Contract for convenience at any time and without cause. Upon receipt of notice, Contractor shall immediately discontinue providing the work or service and, if applicable, the placing any orders for any materials, facilities, and supplies in connection with the performance of the work or services of this Contract.

11. Non-appropriation. All funds for payment by County under this Contract are subject to the availability of an annual appropriation of the New Hanover County Board of County Commissioners for the services provided under the Contract,

County will terminate the Contract, without termination charge or liability, on the last day of the then-current fiscal year or when the appropriation made for then-current year for the services/items covered by this Contract is spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Contract, cancellation shall be accepted by the Contractor on ten (10) business days' prior written notice, but failure to give such notice shall be of no effect and County shall not be obligated under this Contract beyond the date of termination.

12. Non-waiver of Rights. The parties mutually agree that either party's failure to insist upon the strict performance of any provision of this Contract 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 Contract.

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

14. Subcontracts. The Contractor shall utilize no subcontractors for performing the work or services to be performed under this Contract without the prior written approval of the County.

15. Entire Contract. This Contract constitutes the entire understanding of the parties.

16. Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.

17. Severability. If any provision of this Contract is held unenforceable, all remaining provisions of this Contract shall remain in full force and effect.

18. Inclusive Terms. Use of the masculine herein shall include the feminine and neuter, and the singular shall include the plural.

19. Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina.

20. E-Verify Compliance. Pursuant to N.C.G.S. 143-133.3, Contractor shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. Violation of the provision, unless timely cured, shall constitute a breach of Contract.

21. Compliance with Federal Law. If applicable, all federally funded projects, loans, grants, and sub grants whether funded in part or wholly, must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200).

22. Notices. All notices required hereunder to be sent to either party shall be sent to the following designated addresses, or to such other address or addresses as may hereafter be designated by either party by mailing of written notice of such change of address, by Certified Mail, Return Receipt Requested:

To County:
New Hanover County Facilities Management
Attn: Scott Gordon
200 Division Drive
Wilmington, NC 28401

To Contractor:

23. Assignability. The parties hereto agree that this Contract is not transferable and shall not be assigned by either party without the written consent of the other party to this Contract.

24. Contract Under Seal. The parties hereto expressly agree to create a Contract under seal.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals, the day and year first above written and by authority duly given.

CONTRACTOR

[SEAL]

BY: _____ (Seal)
President

ATTEST:

Secretary

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in and for the State and County aforesaid, certify that _____, personally came before me this day and acknowledged that (s)he is President of _____, a _____, and that by authority duly given and as the act of the limited liability corporation, the foregoing instrument was signed and sealed in its name by its President.

WITNESS my hand and official seal, this _____ day of _____, 2022.

Notary Public

My Commission Expires

[Notary Seal]

**[REST OF PAGE INTENTIONALLY BLANK.
NEW HANOVER COUNTY DIGITAL SIGNATURE PAGE FOLLOWS EXHIBIT(S) AND IS ATTACHED
HERETO AND INCORPORATED HEREIN.]**

STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

FEMA COMPLIANCE ADDENDUM

Contractor shall fully comply with the following additional federal provisions set forth below:

I. Equal Opportunity.

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or

applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. 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.
5. 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.
6. 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.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract 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 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.

8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

II. Davis Bacon Act

a. Standard. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

b. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant

Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

c. Requirements. If applicable, the non-federal entity must do the following:

i. The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

Compliance with the Davis-Bacon Act.

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

III. COPELAND ANTI-KICKBACK ACT

a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).

b. Applicability. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to the FEMA Public Assistance Program.

c. Requirements. If applicable, the non-federal entity must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Compliance with the Copeland “Anti-Kickback” Act.

a. 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.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as 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.

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

IV. Contract Work Hours and Safety Standards Act.

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.

1. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(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 (b)(1) of this section, in the sum of \$26 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 (b)(1) of this section.

2. Withholding for unpaid wages and liquidated damages. County 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 (b)(2) of this section.
3. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.

V. Patent Rights.

4. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative

Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

5. Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

VI. Clean Water Act and Federal Water Pollution Control Act.

6. 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.
7. The contractor agrees to report each violation to the County and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
8. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
9. 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.
10. The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency

Management Agency, and the appropriate Environmental Protection Agency Regional Office.

11. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

VII. Suspension and Debarment.

- a. This contract 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's 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).
- b. 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.
- c. This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). 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 (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. 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.

VIII. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).

- a. 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 who in turn will forward the certification(s) to the awarding agency.

- b. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION
REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative
Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal

- contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

IX. Procurement of Recovered Materials.

- a. In the performance of this contract, 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 contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

X. Access to Records. The following access to records requirements applies to this contract:

- a. The Contractor agrees to provide County, FEMA, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

- XI. Changes. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.
- XII. DHS Seal, Logo, and Flags. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- XIII. Compliance with Federal Law, Regulations, And Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- XIV. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- XV. Program Fraud and False or Fraudulent Statements or Related Acts. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this contract.