



Request for Proposal – S1-0226.1

**Title: HVAC UNIT REMOVAL AND
REPLACEMENT AT 929 N FRONT ST**

Issue Date: February 10, 2026

**Due Date: March 03, 2026 (RFP closing date)
By 3:00 PM ET
LATE PROPOSALS WILL NOT BE ACCEPTED**

Issuing Department: PURCHASING DIVISION

**Direct all inquiries concerning this RFP to:
Christine R. Karem, Sr. Contract Specialist**

**A PRE-PROPOSAL MEETING WILL BE HELD – TUESDAY, February
17, 2026 @ 10:00 AM at – 929 North Front Street, Wilmington, NC
28401.**

February 10, 2026

RFP No.: S1-0226.1

**HVAC UNIT REMOVAL AND REPLACEMENT
929 NORTH FRONT ST**

Dear Sir or Madame:

This Request for Proposal (RFP) will provide your firm with sufficient information to enable you to prepare and submit a proposal for the removal and disposal of the existing HVAC Unit and install a new replacement HVAC Unit at 929 N Front St.

The RFP includes a preliminary scope of work, general terms and conditions, and References/Qualifications requirements. The general terms and conditions are part of any submitted response and will be incorporated into the contract. Submission shall constitute acceptance of these terms and conditions. Conditional responses may be rejected at the City's discretion.

For your RFP to be considered the lowest responsive and responsible proposer, it must adhere to the submittal requirements that follow. 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 proposal to select the most qualified proposer. After the most qualified proposer 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 team.

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 upon request.

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

Sincerely,

Christine R. Karem

Christine R. Karem, Sr. Contract Specialist
M/WBE Coordinator

cc: Darrell McCall, Facility Superintendent

REQUEST FOR PROPSAL

Introduction

The City of Wilmington is seeking a qualified and competent remove and replace the existing Data Aire unit and install a new STULZ CyberAir system. STULZ is selected system to maintain consistency of equipment. The location is MDF (Main Data Frame) Room 264 at The Skyline Center at 929 N. Front St. Wilmington, NC 28401. The Proposer must demonstrate the ability and expertise to provide the required services, manpower, and experience in the intricate chilled water systems with redundancy backup cooling features to complete the project. The Proposer must comply with all applicable ordinances, state, local, and federal laws, and the terms and conditions of the contract agreement. The City of Wilmington encourages participation by Disadvantaged Business Enterprises.

Project Summary/Scope of Work

1. Disconnect and properly remove existing obsolete Data Aire unit if MDF and properly dispose.
2. Provide all labor and material to install STULZ equipment listed below.
3. Labor and material to disconnect and reconnect chilled water piping.
4. Insulate chilled water piping to match existing condition.
5. All high and low voltage work is included.
6. Control work to be completed and connected to the existing control system.
7. Control new unit to existing ETROL 360 control system.
8. High Voltage disconnect for the new equipment is included.
9. Included client in-service and training.
10. Factory start-up.
11. All permits and fees.

Equipment Info:

STULZ CyberAiR Vertical Floor Mounted Cooling System Model # CFD-053-D2W-W-IT

RFP Response Timeline

The RFP process shall adhere to the following schedule.

RFP Process	Date	Time
Advertise RFP	2-10-2026	3:00 PM
Pre-Proposal Meeting	02-17-2026	10:00M
RFP Written Questions Due	2-24-2026	5:00 PM
City Responses to RFP Questions	2-26-2026	5:00 PM
RFP Due Date	03-03-2026	3:00 PM

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

Pre-Proposal Questions

Questions concerning the specifications in this Request for Proposal should be directed to the Project Manager. Questions will be received until **Tuesday, February 24, 2026 at 5:00 PM**. An addendum summarizing all questions and answers will be posted on the City’s website.

Project Manager for the City of Wilmington
Darrell McCall, Facility Superintendent
Email: darrell.mccall@wilmingtonnc.gov
Phone: 910-341-4610

Submittal Requirements

Respondents must submit proposal certification documents from pages P-1 through P-3. Sealed proposals for the removal and replace the existing Data Aire Unit and install the new STULZ CyberAir system. All proposals must be enclosed in a sealed envelope and marked: **“RFP No. S1-0226.1”, “HVAC Unit Removal and Replacement at 929 N Front St”**. Proposals must be received by the City on or before **3:00 PM, Tuesday March 03, 2026**. Deliver the PROPOSAL to the following mailing / physical address:

City of Wilmington
Attn: Christine R. Karem,
Sr. Contract Specialist
929 North Front Street, 10th Floor
P O Box 1810
Wilmington, NC 28402

Proposals received after the “RFP 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 envelope must be 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 RFP that cannot be met must be indicated in the statement of qualification. The proposer must respond to the entire Request for Proposal (RFP). Any proposals received by the City that are incomplete in their responses will be immediately disqualified.

Rights to Submitted Material

All statements, responses, inquiries, or correspondence relating to or in reference to this RFP, 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 statement of qualification 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 Proposal.

References- Qualifications-Experiences:

The CONTRACTOR, under this Request for Proposal (RFP), will be responsible for all labor, materials, equipment, tools, and electrical upgrades required to complete the work as outlined in the Scope of Work.

- The CONTRACTOR will be required to evaluate all the locations and discuss with the Project Manager any additional concerns that exist prior to the submission of the RFP.
- All personnel working for the CONTRACTOR shall wear a company uniform with a name/logo visible to others while performing services on the City premises.
- All work shall be scheduled in advance prior to the onsite visit. All personnel shall check in with onsite staff prior to commencing work.
- All personnel working in the vicinity shall wear and /or use safety protection while all work is performed. Any questions or injuries shall be brought to the attention of the Occupation Safety and Health Officer (OSHO), Mr. Mark Cox 910-218-0086.
- The CONTRACTOR agrees that the OWNER is not responsible for fire, theft, loss, and/or vandalism of any of the CONTRACTOR’s tools, equipment, materials, supplies, and/or work in progress.
- The CONTRACTOR agrees to maintain the cleanliness of the OWNERS property and shall clean up, remove, and dispose of all debris associated with this work.
- All work, including start-up of equipment, is to be performed during regular working hours (8 a.m. to 5 p.m.). After hours, work will be coordinated with and approved by the OWNER.
- The CONTRACTOR is to install all components per all manufacturing instructions and meet all applicable codes and requirements to the final approval of local governing authorities having jurisdiction.
- CONTRACTOR to submit Shop Drawings for review & approval prior to ordering materials.

Work, Licenses, Permits, and Inspections

- The CONTRACTOR agrees to do all work in accordance with the manufacturer's recommendations, approved plans, specifications, and performance standards and in accordance with good building practice, following any/all municipal, state, and federal laws and codes pertaining thereto and to the satisfaction of the OWNER.
- The CONTRACTOR further agrees to obtain all permits required in connection with their work.
- The CONTRACTOR will provide the OWNER with advance notice of the time and the dates for any scheduled inspection(s).
- The CONTRACTOR is to submit all Certifications and Licenses with RFP.
- The CONTRACTOR has a minimum of 2 years' experience and provides 2 references with RFP submittal.

**RESPONDER'S/ PROPOSAL
CERTIFICATION**

Proposer's Signature: _____

Date: _____

By signing above, I certify that I have carefully read and fully understand the information contained in this RFP; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Request for Proposal being submitted and have the authority to sign Statement of Qualification on behalf of my organization.

BY (Printed): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

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

1. Please indicate the type of business organization:

- (a) Proprietorship _____
- (b) Partnership _____
- (c) Corporation _____
- (d) Limited Liability Co. _____

2. If the 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 the corporation (generally President and Secretary).

Firm is incorporated in what state?

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

3. If the 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, what is the state of registration? _____

If the business is a foreign limited partnership, does the business have a certificate of authority from the North Carolina Secretary of State?

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

Name of owner: _____

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

List the names and titles of managers or member managers who will execute the contract on behalf of the company. _____

What is the state of the organization? _____

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

6. For all proposers:

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 _____.

Proposal Cost \$ _____

Proposal Total Cost in Words:

Expected Start Date: _____ **Duration of Project:** _____

The undersigned acknowledges receipt of any issued Addendums to this Project by recording the Addendum number and date acknowledged below:

Addendum #1: _____ Dated: _____

Addendum #2: _____ Dated: _____

Addendum #3: _____ Dated: _____

**NON-COLLUSION AFFIDAVIT
CITY OF WILMINGTON**

RFP# - S1-0226.1

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 a 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: _____

NOTARY

Subscribed and sworn to before me,

This _____ day of 2024 Notary Public _____

(NOTARY SEAL)

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. CONTRACTOR 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 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).
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 CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, leased or used by the CONTRACTOR; 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 CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR for the City of Wilmington.

B. Workers' Compensation and Employer's Liability

1. CONTRACTOR 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 CONTRACTOR for the City of Wilmington.
4. The U.S. Longshore and Harbor Workers' 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 situation. (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. CONTRACTOR shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 for 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. CONTRACTOR waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to Section 11.C.1 of this agreement.
6. The CONTRACTOR'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 CONTRACTOR's insurance.

D. Deductibles and Self-Insured Retentions

1. The CONTRACTOR 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.

E. 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 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.

F. 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.

G. Evidence of Insurance

1. The CONTRACTOR 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.

H. 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. Commercial General Liability coverage shall include independent CONTRACTOR's coverage, and the CONTRACTOR shall be responsible for assuring that all subcontractors are properly insured.

I. Conditions

1. The insurance required for this contract must be on forms acceptable to the City of Wilmington.
2. The CONTRACTOR 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 CONTRACTOR without prior written approval of the City of Wilmington.
3. The CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR and such coverage and limits shall not be deemed as a limitation of CONTRACTOR'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 CONTRACTOR 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, CONTRACTOR 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, the performance or nonperformance by CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) 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 any claim or defending any action and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit CONTRACTOR's responsibility to release, indemnify, keep and save harmless and defend 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.

CONTRACTOR, 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

CONTRACTOR 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. CONTRACTOR 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 Management, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure 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. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, 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. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR believes documents related to the Agreement contain trade secrets or other proprietary data, CONTRACTOR must notify the CITY and include with the notification a statement that explains and supports CONTRACTOR'S claim. CONTRACTOR also must specifically identify the trade secrets or other proprietary data that CONTRACTOR believes should remain confidential.

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

CONTRACTOR REPRESENTATIONS AND WARRANTIES

Independent CONTRACTOR. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONTRACTOR will be an independent CONTRACTOR 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 CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR 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 CONTRACTOR and the CITY, and the CITY will not be liable for any obligation incurred by the CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

Non-Discrimination. CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONTRACTOR in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONTRACTOR, the CONTRACTOR 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 CONTRACTOR agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONTRACTOR shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONTRACTOR 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. Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant and represent that the CONTRACTOR is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the CONTRACTOR has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONTRACTOR were authorized to do so.

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. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

The CONTRACTOR shall ensure 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 CONTRACTOR shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONTRACTOR 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-one (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-one (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONTRACTOR 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 CONTRACTOR 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.