

**Invitation for Construction Bids  
BUNCOMBE COUNTY, NORTH CAROLINA  
RENEWABLE ENERGY PROCUREMENT AND INSTALLATION  
NOTICE:**

Buncombe County is soliciting construction bids from qualified firms who can provide installation of solar renewable power generating systems (“PV Systems”). This solicitation is a collaborative procurement among local public agencies within the geographic boundaries of Buncombe County (individually “Agency” and collectively, the “Agencies”).

A bid package which includes a description of the required services can be obtained on the Buncombe County website at [www.buncombecounty.org](http://www.buncombecounty.org) beginning October 31, 2022. Bids must be submitted in a sealed envelope by **December 2, 2022**. Proposals may be delivered to the following address:

**Buncombe County Office of Sustainability  
Attn: Jeremiah LeRoy  
200 College St., Fourth Floor  
Asheville NC, 28801**

Respondents may contact the County Procurement Manager, Ron Venturella, with requests for information regarding this solicitation. Questions should be submitted in writing via email to [ron.venturella@buncombecounty.org](mailto:ron.venturella@buncombecounty.org). All requests for information will be submitted no later than **November 21, 2022 at 3:00pm**. An Addendum will be issued to address all relevant questions if necessary.

The right to reject any and all proposals by Agencies is reserved.

Any and all costs of preparing proposals (including site visits where needed) shall be the responsibility of the submitting firm.

**Mandatory Pre-Bid Online Meeting** to be held at **3:00 pm on November 7, 2022**.

The online meeting will be a Microsoft Teams Meeting. Please ensure MS Teams is functional on any device from which you plan to attend this virtual meeting.

**The online pre-bid meeting is mandatory for all organizations who plan to submit bid proposals. At least one representative from all respondents must participate in this online meeting. If an organization does not attend this online pre-bid meeting, their bid will be considered NON RESPONSIVE and will not be reviewed.**

## **General Overview**

### **Background**

Buncombe County is located in the Blue Ridge Mountains, in the Western portion of the state of North Carolina and has a population of over 270,000. Buncombe County has seen steady and continued business and residential growth in recent years. In addressing the benefits and challenges of this continued growth, these local governments have set aggressive goals to reduce the adverse carbon impacts their communities have on the environment. Buncombe County has adopted renewable energy goals – Buncombe County adopted a resolution setting a goal of 100% renewable energy for County operations by 2030 and 100% renewable for the overall community by 2042. In order to achieve these goals, the communities must transition to low-carbon and renewable energy sources. Development of renewable energy resources on public sector facilities has become a priority for the residents of Buncombe County.

This solicitation is intended to result in renewable energy development on public facilities and for public agencies to fully understand the cost implications of such development.

### **Introduction**

Buncombe County (the “County”) is soliciting proposals from qualified firms to provide “turnkey” design, installation, operation and maintenance of solar photovoltaic systems (“PV Systems”) on public facilities. These public facilities may include facilities owned by a variety of public agencies.

The County is leading the procurement collaborative for the various public agencies. The PV systems will be located on the respective Agencies’ properties, including County-owned properties and at other locations owned by other Agencies. Each Agency has agreed to participate in the solicitation.

Firms submitting responses to this solicitation do so understanding that neither the County as lead agency nor any other Agency guarantees the award of any contracts or work. All agencies reserve the right, in their sole and absolute discretion to reject any and all proposals.

The Firms responding to this solicitation must have identified and established relationships with engineers, installers, operators, maintenance, and verification firms. The County recognizes that some Firms may have integrated PV System development.

### **Introduction and PV System Sites**

#### Goals

The County and other Agencies aim to reduce carbon emissions, promote clean and renewable energy technology, spur innovation and job creation in the region, educate the public about renewable energy, and reduce budgetary uncertainty resulting from potentially unpredictable electricity and natural gas prices.

In reviewing bid responses, emphasis will be placed on the total cost of the PV systems. All responding firms, in order to be considered responsive, will be required to provide in their base bid the cost for direct purchase and ownership of the PV systems. Agencies are not currently exploring alternative methods of procurement such as financing or leasing.

## PV System Sites

The Agencies have contracted with an experience solar contractor to perform assessments of their respective facilities to evaluate and select potential PV System sites. These assessments **include structural engineering analysis, preliminary PV system layout, electrical system evaluation, production estimates, and detailed product specifications**. This documentation has been included in the solicitation package and should be used to provide bid costs. Bids should be based on the provided layouts and product specifications.

Information and documentation on the individual sites can be found at the following web portal:

<https://www.buncombecounty.org/Governing/Depts/Purchasing/default.aspx>

## Site Visit Schedule

The Agencies will make every effort to accommodate site visits on a set schedule to be outlined in this solicitation. The intent is to provide a general understanding of the scope of the work, information in relation to viable PV Systems, attract highly qualified firms with performance track record with similar work, and secure more favorable pricing and best value for the Agencies. However, the Agencies make no representations with respect to the sites, including their suitability. Submitting firms take sole and full responsibility for conducting any necessary due diligence and assessing the sites and their conditions in developing their proposal. Such self-assessment of the sites and its conditions shall be performed by the Firms at their own cost. Agencies are not responsible to compensate for such work.

## Scope of Agreement

The selected respondent will be required to provide all labor, supervision, materials, engineering, supplies, transportation, equipment, and services necessary to assume overall responsibility for the coordination and communication of this project's goals.

## Timeline and Bid Selection

Timeline – This timeline is tentative and may be changed via an addendum to this solicitation.

- Issue Solicitation October 31, 2022.
- **MANDATORY** Pre-Bid Online Meeting November 7, 2022 at 3:00pm  
[Meeting link here](#)

This is a Microsoft Teams meeting – please take the time to ensure that your computer works with MS Teams in advance of the meeting. The link should take you to the meeting directly, but in the event you have trouble you can also use the following:

- MS Teams meeting ID: 229 459 660 234
- Passcode: w7Y6wH
- Request For Information Start Period – November 8, 2022
- Site Visits – to be conducted **November 16, 2022** A schedule with time and location will be disseminated after the pre-bid meeting
- Request for Information Deadline – November 21, 2022 at 5:00pm
- Addendum Issued – TBD (As Necessary based on RFI)
- Bid Submission Deadline – December 2, 2022 2:00pm.
- Notice to Proceed or Contract Award Date – TBD
- Commercial Operation Date - TBD

**Submission Deadline**

Proposals shall be delivered in a sealed envelope no later than December 2, 2022 at 2:00pm, and delivered to the following address:

**Buncombe County Office of Sustainability****Attn: Jeremiah P. LeRoy****200 College St. 4<sup>th</sup> floor****Asheville, NC 28801**

A public bid opening will be held at this same location on December 2, 2022 at 3:00 PM EST

**Additional Information**

No interpretation of the meaning of any provision in this solicitation, nor any correction of any apparent ambiguity, inconsistency, error, or other matter pertaining to this solicitation shall be made to a respondent orally. All requests for interpretation, clarification or additional information regarding this solicitation should be made in writing, via email to [ron.venturella@buncombecounty.org](mailto:ron.venturella@buncombecounty.org). The **deadline for questions shall be October 21, 2022 at 5:00 pm**. The County shall not be obligated to respond to requests for such interpretation or correction.

Respondents or their agents are instructed not to contact any other County employees, agents or contractors of the County and participating Agencies, the County Manager offices, or the County Commission, or to externally manipulate or influence the procurement process in any way, other than through the instructions contained herein, from the date of release of this solicitation to the date of execution of the Agreement resulting from this solicitation. Agencies, at their sole discretion, may disqualify Respondents in violation of this paragraph.

Agencies reserve the right to cancel or modify the terms of this solicitation at any time. County will provide Respondents with written notice of the cancellation or modification.

## Renewable Energy Installation Services

### Scope of Work

As mentioned in the background section of this solicitation, Buncombe County is working to develop an approach to reach their goals for carbon footprint reduction and renewable energy. A major step in this process is to install renewable energy systems on as many public facilities as is financially viable.

The Respondent must demonstrate the ability to perform the work described in the Scope of Services and have significant experience to perform the outlined work successfully. The design and engineering of the PV systems is to maximize the energy resources, taking into consideration the customer's electrical demand and load patterns, proposed installation site, available solar resources, existing site conditions, and other relevant factors.

### Scope of Services

- The scope of services provided by the Respondent shall include all tasks required to engineer, fabricate, deliver, and install PV systems on the identified public facilities that stress cost savings, energy use reduction and efficient operation.
- The scope shall also include, but not be limited to, securing all permits and approvals from governing and regulatory agencies, all labor, taxes, services, permit fees, and equipment necessary to produce and install a fully operational PV system;
- Supply all equipment, materials, and labor necessary to install the PV systems and integrate them with other power sources. All applications and costs associated with utility interconnection shall be borne by the awarded Respondent.
- Provide a monitoring program that allows Agencies to monitor, analyze and display historical and live solar electricity generation data for installed sites. The system will allow Agencies to track progress toward the renewable goal for all the systems for each Agency as well as monitor performance against the warranted production requirements on a site-by-site basis.
- Operation and Maintenance contracts will be listed as an alternate on the bid and will be discussed during contract negotiations

### Design Guidelines for PV Systems:

Preliminary layouts for all PV systems have been provided for each project. Respondents should use the provided layouts and product specifications to create their bids without exception. Spec sheets for the racking systems and inverters have been provided with this RFP. In order to provide some level of flexibility for respondents the County will except bids which include modules that meet the following specifications

- **Manufacturer: Trina or QCell**
- **Module Type: Bifacial**
- **Wattage: 465W or greater**
- **Efficiency: 19.8% or greater**
- **Performance Warranty Term: 30 Years**
- **Product Warranty Term: 12 Years**
- **Connectors: MC4 connectors compatible with MLPE**

The awarded Respondent will be required to complete all due diligence and installation requirements

necessary to maintain any and all existing roof warranties at all of the facilities listed in the RFP documentation.

### **Utility Interconnection**

The contractor shall coordinate with Duke Energy Progress (DEP) to ensure that the project satisfies all DEP criteria for interconnection of the project to the DEP electric distribution system. This includes submitting all interconnection application documents, coordinating all negotiations, meeting with DEP, conducting design reviews, and participating in any needed interaction between DEP and the Agencies.

The contractor shall manage the interconnection and start-up of the project in coordination with the sites and DEP. The contractor shall include any expense for interconnection, processing, and other fees and expenses as may be required by DEP for interconnection and operation of the project in the submitted solicitation response budget.

### **Bid Format**

Bids should be submitted in a format that allows for uniform review and easy access to information. The proposals should be clear and concise. Emphasis should be placed on the specific qualifications of Respondent and their ability to manage the requested services. To assist in the evaluation process the proposal shall contain at least the following information:

- **Transmittal Letter and Signature Page:** Provide a brief cover letter identifying the primary contact person, their telephone number and email. The letter should state your firm's commitment to provide the services as needed in this solicitation, summarizing the key points of the submittal. (One page max).
- **Budget Spreadsheet: Found in the Attachments section of this solicitation. The budget spreadsheet will be included in the solicitation documents available online. Respondents are required to provide an itemized budget for each individual project that separates out the various costs such as modules, racking, inverters, permits, interconnection, etc. for each project. This spreadsheet should be completed and provided on a USB drive and included with the sealed bid. There is no need to print the entire spreadsheet.**
- **ONLY the Summary tab of the spreadsheet should be printed and signed by the respondent and included in the sealed envelope.**

So the County can determine if a bidder is responsible please provide the following:

- **Basic Qualifications**
  - Provide the firm's history and experience with commercial renewable energy installation in the last 5 years;
  - A complete list with brief descriptions of recent and relevant commercial renewable installations the firm has participated in in the last 5 years;
  - Qualified firms must have a minimum experience of 5 years in commercial solar development and installation (residential installations will not count as qualified experience)
  - Qualified firms must have experience with turn-key solar development and installations on commercial facilities and have installed at least 1MW of commercial solar in the previous 5 years; this experience should include having installed ballasted flat rooftop

- systems and flush mounted rooftop systems
- Information describing the firm's knowledge or experience coordinating with utilities
- NABCEP Certified PV Installer on Staff – Provide documentation
- **Staff Qualifications**
  - Provide an overview of the qualifications of your project manager and key project staff, including any anticipated sub-contractors;
  - Describe who will perform the various tasks and what will be their level of involvement and responsibilities and give their qualifications for this specific project;
  - Include resumes of individuals; and
  - Indicate the location of the office that agent(s) will work out of while services will be performed.
- **Approach to Project**
  - Provide a general estimated timeline for completion (respondents will not be expected to adhere to any timeline in the solicitation submission, rather this is for the Agencies to get a sense for the estimated amount of time it will take to complete a project of this scope. A formal timeline will be defined with the awarded respondent during contract negotiations).
- **Examples of Work**
  - References: Provide at least three (3) specific example(s) of your firm's projects which might closely mirror the proposed scope of services in this solicitation. Where available, online links to examples should be provided for reference during proposal review. Provide the role your organization performed in the project (e.g. supplier, lead contractor, design, consulting, etc.) including: location, date installed and customer contact information.

### **Bid Bond/Deposit**

Each bid shall be accompanied by a cash deposit, a cashier's check or a certified check drawn on some bank or trust company insured by the Federal Deposit Insurance Corporation of an amount equal to not less than five percent (5%) of the proposal or in lieu thereof, a bidder may offer a bid bond of five percent (5%) of the maximum amount of the total bid executed by a surety company licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will, upon demand, forthwith make payment to the obliges upon said bond if the bidder fails to execute the contract in accordance with the bid bond. Said deposit shall be retained by the Owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten (10) days after the award or to give satisfactory surety as required by law.

Performance Bond and a Payment Bonds will be required from the winning bidders for one hundred percent (100%) of each project price. Contractors will be allowed to obtain performance and payment bonds individually for each project as they are built so as not to over tax the bonding capacity of the awarded bidder. A Corporate Surety approved by the Owner, will be required for the faithful performance of the contract.

## **Bid Award**

This solicitation will adhere to North Carolina General Statutes for construction contracting. The contract will be awarded to the lowest responsive, responsible bidder for purchasing of the PV systems.

As stated above, all responding firms, in order to be considered responsive, **will be required to provide a base bid for the cost for direct purchase and ownership of the PV systems.**

The County staff will conduct reference checks by contacting those individuals submitted by the Respondent with their bid in response to this solicitation. In addition, the Agencies may contact references not listed by the Firm.

References checks will be used to validate information included in the Bid Proposal submitted by Respondents.

Agencies reserve the right to investigate and confirm the Respondent's financial responsibility. This may include financial statements, bank references and interviews with past clients, employees, and creditors, as well as the quality of services. Unfavorable responses to these investigations are grounds for rejection of a bid proposal.

If compensation or other terms cannot be agreed upon with the selected firm, the County will terminate negotiations with that firm and may enter into negotiations with the next lowest, responsive responsible bidder.

## **General Terms & Conditions**

**READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFQ document.

**LATE PROPOSALS:** Late proposals, regardless of cause, will not be considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure the timely submission of proposals.

**ACCEPTANCE AND REJECTION:** Agencies reserve the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal.

**INFORMATION AND DESCRIPTIVE LITERATURE:** If required elsewhere in this proposal, each Vendor shall submit with its proposal any sketches, descriptive literature and/or complete specifications covering the products and Services offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a proposal without further consideration.

**SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all print responses submitted meet the following:

All copies of the proposal are printed double sided. All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%. Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable. Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.

HISTORICALLY UNDERUTILIZED BUSINESSES: Buncombe County is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the County encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on County contracts. Buncombe County has a current verifiable goal of twelve percent (12%) for minority participation on building construction or repair projects, ten percent (10%) each for procurement, and services

INELIGIBLE VENDORS: As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the Buncombe County by any company identified in a) or b) above shall be void *ab initio*.

CONFIDENTIAL INFORMATION: County requests that no confidential information be included in the initial proposals. To the extent permitted by applicable statutes and rules, the County will maintain as confidential trade secrets in its proposal that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the County will notify Vendor of such action and allow Vendor to defend the confidential status of its information.

MISCELLANEOUS: Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.

INFORMAL COMMENTS: Buncombe County shall not be bound by informal explanations, instructions or

information given at any time by anyone on behalf of the County during the competitive process or after award. The County is bound only by information provided in writing in this RFQ and in formal Addenda issued through IPS.

COST FOR PROPOSAL PREPARATION: Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; Buncombe County will not reimburse any Vendor for any costs incurred or associated with the preparation of proposals.

AVAILABILITY OF FUNDS: Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in The Contract.

SITUS AND GOVERNING LAWS: This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.

PAYMENT TERMS: If a payment schedule is not part of The Contract then payment terms will be Net 30 days after receipt of a correct invoice or acceptance of goods, whichever is later.

NON-DISCRIMINATION: The Vendor will take necessary action to comply with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by Federal and State law.

ADVERTISING: Vendor agrees not to use the existence of The Contract or the name of Buncombe County as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the County is willing to act as a reference by providing factual information directly to other prospective customers.

## INSURANCE

**Insurance.** Contractor agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the County's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Contractor's duty to carry adequate insurance. All policies of insurance shall be primary insurance and non-contributory with respect to all other available sources. The minimum insurance coverage which the Contractor shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

**Worker's Compensation.** Coverage at the statutory limits in compliance with applicable State and Federal laws. Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

**Employer's Liability.** Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

**Commercial General Liability.** Insurance covering all operations performed by the Contractor with a minimum limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting coverage for premises operations, independent contractors, completed operations, product and contractual exposure, and shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them. All Agencies for which the bidder is supplying bids shall be named as an additional insured under the policy.

**Professional Liability.** Insurance covering the Contractor and any subcontractors for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim with a \$2,000,000 aggregate. The policy shall remain in effect two (2) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.

**Business Automobile Liability.** Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

**Umbrella/Excess Liability.** If the underlying liability policy limits are less than those required, Contractor may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying general liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

**Contractor's Pollution Liability.** If the Contractor's commercial general liability policy referenced above does not include an endorsement including the Limited Pollution Liability Extension, Contractor will be required to purchase a Pollution Liability policy with limits of \$1,000,000 per loss and \$1,000,000 aggregate. Contractor shall keep this policy in effect 3 years after completion of the project. Buncombe County shall be named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations.

**Installation Floater** insuring the amount of the contract. Coverage is to be written on a Special Covered Cause of Loss Form and is to include theft, faulty workmanship, mechanical or electrical damage during testing and labor costs to repair damaged work, soft costs (expediting expenses); deletion of any coinsurance provision is also required; any exclusions for underground exposures to be deleted. Flood and Earthquake coverages are also to be provided. Coverage shall end when the work is accepted by each Agency regarding each property owner's respective work locations.

**Additional Insurance Provisions.** If the Contractor maintains higher limits than the minimums shown above, the Agencies require and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and

coverage shall be available to the Agencies regarding each property owner's respective property interests.

The Contractor shall provide the all Agencies with certificates of insurance on an approved form, evidencing the above amounts. All Agencies shall be named as an additional insured under the commercial general liability and contractor's pollution liability policies. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the Agreement.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the Agencies, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- VII or better as determined by A. M. Best Company and shall be in a form acceptable to the Agencies.

The Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and the Contractor shall ensure that Agencies are additional insureds on insurance policies required from subcontractors.

**Waiver of Subrogation:** The Contractor hereby grants to Agencies a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Agencies by virtue of payment of any loss under such insurance. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement.

Nothing in this section is intended to affect or abrogate the Agencies' governmental immunity.

**GENERAL INDEMNITY:** The Vendor shall hold and save all Agencies, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of The Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of The Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the Agency has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the County's and or any other Agencies' agents who are involved in the delivery or processing of Vendor deliverables or Services to the Agency. The representation and warranty in the preceding sentence shall survive the termination or expiration of The Contract.

**CONFIDENTIALITY:** Any County information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential,

used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval by Buncombe County.

COMPLIANCE WITH LAWS: Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

ENTIRE AGREEMENT: This solicitation and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This solicitation, any addenda hereto, and the Vendor's bid proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

AMENDMENTS: The Contract may be amended only by a written amendment duly executed by the Agencies and the Vendor.

NO WAIVER: Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the Agencies under applicable law. The waiver by the Agencies of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

FORCE MAJEURE: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

SOVEREIGN IMMUNITY: Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or state or federal constitutional provision or principle that otherwise would be available to the Agencies under applicable law.

### **Minority Business Participation**

It is the policy of Buncombe County to: (1) provide minorities equal opportunity to participate in all aspects of County contracting and purchasing programs, including but not limited to, participation in procurement contracts for equipment, professional and other services contracts, and construction contracts; (2) prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, disability or national origin, and to conduct its contracting and purchasing programs so as to prevent any discrimination and to resolve all claims of such discrimination.

Buncombe County will actively seek to identify qualified minority businesses and offer them an opportunity to participate as providers of goods and services to the County. It is the intent of this plan to widen opportunities for participation, increase competition and to ensure the proper and diligent use of public funds.

This policy is not intended in any manner to require that contracts be awarded to anyone other than the lowest responsible bidder, not to supersede the requirement of any federal, state or local laws and rules, regulations and policies adopted pursuant thereto.

Buncombe County has a current verifiable goal of twelve percent (12%) for minority participation on building construction or repair projects, ten percent (10%) each for procurement of goods and services.

#### DEFINITIONS

1. Minority- a person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black, that is, a person having origins in any of the black racial groups in Africa;
- b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
- c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
- d. American Indian, that is, a person having origins in any of the original peoples of North America; or
- e. Female

2. Minority Business (MBE) - means a business:

- a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
- b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637: Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

#### MINORITY OUTREACH PLAN AND GUIDELINES

Buncombe County will employ the following strategies to encourage participation from MBEs.

1. Work with minority-focused and small business groups that support MBE inclusion in the

solicitation of bids.

2. Place emphasis on the importance of soliciting certified MBE firms for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MBE firms.
3. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
4. Assess the effectiveness of the MBE program, and identify opportunities to enhance it by evaluating MBE participation and compliance and reviewing the good faith efforts provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified MBE firms that have expressed an interest in Buncombe County projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors who plan to participate in the project.
6. Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their MBE outreach programs are working and to share "best practices" and ideas to improve programs.
7. Participate in educational opportunities throughout the community as they become available and offer training sessions to share Buncombe County's outreach plan with interested businesses and organizations
8. Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors, and small businesses, and provide information to the general public about the MBE program, and continue outreach efforts to the business community.
9. Enhance Buncombe County's web page by including the outreach plan and guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.
10. Advertise upcoming bid opportunities in minority-focused media.
11. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

#### Certification

Buncombe County requires certification for minority, disadvantaged or women-owned businesses. Any business that desires to participate as an MBE will be required to complete and submit for certification, documents required by any of the agencies listed below. Only those firms holding current certification through at least one of the following agencies will be considered eligible for inclusion in meeting the MBE participation percentage goals:

North Carolina Department of Administration Historically Underutilized Business (HUB) certification  
North Carolina Department of Transportation Minority/Disadvantaged/Women-owned Business certification  
Small Business Administration 8(a) certification  
Other governmental agencies on a case-by-case basis

## MINIMUM COMPLIANCE REQUIREMENTS

All written statements or affidavits made by the bidder shall become a part of the agreement between the Contractor and Buncombe County for performance of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a breach of the contract. A finding by Buncombe County that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of Buncombe County whether to terminate the contract for breach.

In determining whether a contractor for construction projects has made good faith efforts, Buncombe County will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort, is grounds for rejection of the bid. Good faith efforts include:

1. Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (10 pts.)
2. Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. (10 pts.)
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 pts.)
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 pts.)
5. Attending any pre-bid meetings scheduled by the public owner. (10 pts.)
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 pts.)
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (15 points)
8. Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters

of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (25 pts.)

9. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. (20 pts.)
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands. (20 pts.)

**MBE SUBCONTRACT GOALS:**

The goals for participation by Minority firms as subcontractors on this project have been set by the Buncombe County Board (hereinafter Board) at 12%.

**MBE FORMS ARE FOUND IN THE "ATTACHMENTS" SECTION OF THIS SOLICITATION**

The bidder must identify on MBE Form 1, the businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if bidder will perform work under contract by its own workforce, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).

**The lowest responsible, responsive bidder must provide Affidavit C**, that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal.

**OR**

Provide Affidavit C, that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, **with documentation of Good Faith Effort, if the percentage is not equal to the applicable goal.**

**OR**

Provide Affidavit B, which includes sufficient information for the State to determine that the bidder does not customarily subcontract work on this type project.

**The above information must be provided as required. Failure to provide this evidence may result in rejection of the bid and award to the next low bidder.**

**MINIMUM COMPLIANCE REQUIREMENTS:**

If the MBE subcontract goals are not achieved, the Bidder shall provide the following documentation to the Board.

1. MBE Utilization Commitment (MBE Form 1) with the bid.

2. Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions (upon request prior to award). This documentation shall include the following evidence:
  - A. Copies of solicitations for quotes to at least three (3) MBE firms from the source list provided by the Minority -Business Development Agency of the Small Business Development Division, North Carolina Department of Economic & Community Development (hereinafter Minority Business Development Agency) for each subcontract to be let under this contract (if 3 or More firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
  - B. Copies of quotes or responses received from each firm responding to the solicitation.
  - C. A telephone log of follow-up calls to each firm sent a solicitation.
  - D. For subcontracts where an MBE firm is not considered to be the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
  - E. Documentation of any contacts, correspondence or conversation with MBE firms made in an attempt to meet the goals.

Note: If the Bidder provides sufficient evidence (listed in #1) that the goals stated in the contract documents have been met, or awards all subcontracts to MBE'S, the documentation listed in #2 will not be required.

Upon being named apparent low bidder, the Bidder shall provide a Letter of Intent (MBE) Form 3), complete with a description of the scope of services and dollar value from each MBE firm proposed for use in this contract. Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder. The Board reserves the right to waive any irregularities in MBE documentation if they can be resolved prior to award of the contract, and the Board finds it to be in its best interest to do so and award the contract.

#### SUBCONTRACTOR PAYMENT REQUIREMENTS:

North Carolina General Statute 143-134. 1, states that the percentage of retainage on payment made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the Board to the prime contractor. Failure to comply with this provision shall be considered a breach of the contract, and the contract may be terminated in accordance with the termination provisions of the contract.

The Contractor shall provide an itemized statement of payments to each MBE subcontractor with each request for payment or before final payment is processed.

#### PROGRAM COMPLIANCE REQUIREMENTS:

All written statements, certification or intentions made by the Bidder shall become a part of the agreement between the Contractor and the Board for performance of this contract. Failure to comply with any of these states, certifications, or intentions, or with the MBE Guidelines shall constitute a breach of the contract. A finding by the Board that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the Board whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, the Board will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of their efforts. The Board may take into account any or all of the following:

1. Whether the Bidder attended any pre-bid meetings that were scheduled by the Board;
2. Whether the Bidder advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
3. Whether the Bidder provided written notice to a minimum of three MBE's for each portion of the work subcontract, that their interest in the contract was being solicited in sufficient time to allow the MBE's to participate effectively;
4. Whether the Bidder followed up initial solicitations of interest by contacting MBE's to determine with certainty whether the MBE's were interested;
5. Whether the Bidder selected portions of the work to be performed by MBE's in order to increase the likelihood of meeting MBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation);
6. Whether the Bidder provided interested MBE's with adequate information about the plans, specifications and requirements of the contract;
7. Whether the Bidder negotiated in good faith with interested MBE's not rejecting MBE's as unqualified without sound reasons based on a thorough investigation of their capabilities.

## ATTACHMENTS

The Proposal Cover Sheet is included in the MS Excel Budget Document in the Bidder Info tab. The budget spreadsheet can be found as a part of the solicitation documents on Buncombe County's website at

<https://www.buncombecounty.org/governing/depts/purchasing/default.aspx#sec-bid-rfp-opportunities>



**State of North Carolina AFFIDAVIT A - Listing of the Good Faith Effort**

County of \_\_\_\_\_

(Name of Bidder)

Affidavit of \_\_\_\_\_

I have made a good faith effort to comply under the following areas checked: **Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive** (1 NC Administrative code 30 1.0101)

- 1 - (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 - (10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 - (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 - (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 - (10 pts)** Attended prebid meetings scheduled by the public owner.
- 6 - (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 - (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 - (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 - (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d). Failure to abide by this statutory provision will constitute

a breach of the contract.

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_



Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

State of North Carolina --AFFIDAVIT B - Intent to Perform Contract with Own Workforce

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_

(Name of Bidder)

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

\_\_\_\_\_ contract.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

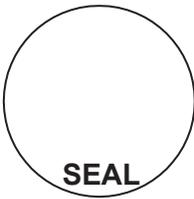
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_