

Solicitation (IFB, RFP, RFQ) No. \_\_\_\_\_

Bidder/Offeror: \_\_\_\_\_

**THIS PAGE IS TO BE FILLED OUT AND RETURNED WITH YOUR BID. FAILURE TO DO SO MAY SUBJECT YOUR BID TO REJECTION.**

ATTENTION

Federal Employer Identification Number or alternate identification number (e.g., Social Security Number) is used for internal processing, including bid tabulation.

Enter ID number here: \_\_\_\_\_

Pursuant to N.C.G.S. 132-1.10(b) this identification number shall not be released to the public.

This page will be removed and shredded, or otherwise kept confidential, before the procurement file is made available for public inspection.

**STATE OF NORTH CAROLINA  
REQUEST FOR PROPOSALS      RFP #43A-2010EECBGLG1**

**TITLE:**                      **Energy Efficiency for County and Municipal Buildings (Recovery Fund)**

**USING AGENCY:** Department of Commerce, State Energy Office

**ISSUE DATE:**                      December 3, 2009

**ISSUING AGENCY:**              State Energy Office

This RFP will utilize multiple Closing Dates. Sealed Proposals subject to the conditions of this RFP will be received at 2 p.m. on the following schedule:

- December 14, 2009
- December 31, 2009
- January 15, 2010
- February 1, 2010

The State Energy Office anticipates funding in the amount of \$953,000 will be available for each of the first three (3) closing dates. Upon the fourth and final closing date, an additional \$4,291,000 is expected to be available. The maximum award in any contract will be \$200,000.

Any proposal received in one closing period that is not funded will automatically be reconsidered for all remaining closing dates. Proposers who are not funded in initial dates may, at their choosing, submit revised proposals for later closing dates.

Awards are made solely on a point basis. All reporting requirements MUST be met without exception. Sample reports and a description of how points are assigned are included in this document.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS AS SHOWN BELOW:

<u>DELIVERED BY US POSTAL SERVICE</u>	<u>DELIVERED BY ANY OTHER MEANS</u>
RFP NO. _____ NC Department of Commerce State Energy Office 1340 Mail Service Center Raleigh, NC 27699-1340	RFP NO. _____ NC Department of Commerce State Energy Office 1830 A Tillery Place Raleigh, NC 27604

**IMPORTANT NOTE:** Indicate firm name (“Technical Proposal” or “Cost Proposal”) (*if applicable*), and RFP number on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Bids submitted via telegraph, facsimile (FAX) machine, telephone, and electronic means, including but not limited to e-mail, in response to this Request for Proposals will not be acceptable.

All inquiries concerning this RFP should be sent in writing to:

Richard Self  
NC Department of Commerce  
State Energy Office  
1830 A Tillery Place  
Raleigh, NC 27604  
919-733-2953 (fax)  
rself@nccommerce.com

**NOTE:**                      Questions concerning the specifications in this Request for Proposals will be received on these consecutive dates December 3, 2009, December 14, 2009, December 30, 2009 and January 15, 2010. ALL QUESTIONS MUST BE SUBMITTED IN WRITING, EITHER BY EMAIL OR FAX TO THE ADDRESS OR NUMBER LISTED ABOVE. NO

QUESTIONS WILL BE RECEIVED BY TELEPHONE. A summary of all questions and answers for each separate date will be posted on the internet as an addendum, located under the RFP # being modified.

**It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.**

**<http://www.pandc.nc.gov/> and <http://www.energync.net>**

**Within two days after notification of award of a contract, the vendor must register in NC E-Procurement @ Your Service (<http://vendor.ncgov.com>).**

## INTRODUCTION

Managing and reducing energy consumption and costs is a core mission of the American Recovery and Reinvestment Act (ARRA). The State of North Carolina (hereafter referred to as “The State”) is interested in receiving responses from counties and municipalities for energy efficiency and conservation projects. These projects may be for any buildings within their jurisdiction.

The State Energy Office (SEO) has advertised and has a list of pre-qualified providers for Technical Assistance which is available without charge to applicants to assist in the preparation of the Strategic Energy Plan. A Strategic Energy Plan is required to be submitted with the response to this RFP. Applicants are not required to utilize this benefit and may employ a firm on their own to assist in preparing the plan at their own expense. Applicants that desire to use one of the pre-qualified firms for Technical Assistance should select the three (3) firms and notify the SEO. The SEO will contact the firms in the order you provide and contract with the first one that can meet the applicants need in a timely manner. The list of pre-qualified firms is located on the SEO website ([www.energync.net](http://www.energync.net)),

Eligible projects include:

- lighting retrofits;
- installation of lighting control technology, including occupancy sensors;
- steam trap survey, repair and/or replacement (excluding boilers<sup>o</sup>);
- retro-commissioning of HVAC equipment and energy management systems;
- basic weatherization;
- installation of premium efficient motors and/or drives;
- heating and air conditioning analysis, optimization and repair.

<sup>o</sup>Boilers require National Environmental Policy Act approval which may cause a 1 - 2 year delay.

## BACKGROUND

### American Recovery and Reinvestment Act

The State Energy Office (SEO) offers this solicitation as part of the federal American Recovery and Reinvestment Act (ARRA) to encourage energy conservation and economic investment in energy technologies by local governments (political subdivisions of the State of North Carolina). ARRA and U.S. Department of Energy guidelines also require that projects adhere to a number of reporting and project implementation standards that are outlined below.

Projects under this Funding Opportunity Announcement (FOA) will be funded with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act’s purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously. Accordingly, special consideration will be given to projects that promote and enhance the objectives of the Act, especially job creation and preservation, and economic recovery, in an expeditious manner.

Be advised that special terms and conditions will apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Access to records by Inspectors General and the Government Accountability Office;
- Prohibition on use of funds for gambling establishments, aquariums, zoos, golf courses or swimming pools;
- Ensuring that iron, steel and manufactured goods are produced in the United States;
- Ensuring wage rates comply with Davis Bacon requirements and are comparable to those prevailing on projects of a similar character;
- Protecting whistleblowers and requiring prompt referral of evidence of a false claim to an appropriate inspector general; and

- Certification and Registration.

The above special terms and conditions will be based on but not limited to provisions included in Titles XV and XVI of the Act. The current terms and conditions are provided as attachment 2. Attachment 2 is based on the Special Provisions located at:

[http://management.energy.gov/business\\_doe/business\\_forms.htm](http://management.energy.gov/business_doe/business_forms.htm).

The Office of Management and Budget (OMB) has issued Initial Implementing Guidance for the Recovery Act. See M-09-10, Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009. OMB will be issuing additional guidance concerning the Act in the near future. It is incumbent upon the applicant to consult the DOE website, [www.energy.gov](http://www.energy.gov), the OMB website <http://www.whitehouse.gov/omb/>, and the Recovery website, [www.recovery.gov](http://www.recovery.gov) regularly to keep abreast of guidance and information as it evolves.

Recipients of funding appropriated by the Act shall comply with all applicable requirements of Federal, State, and local laws, rules, regulations, policy and guidance issued by the U.S. Department of Energy (DOE), the U.S. Office of Management and Budget (OMB), the U.S. Department of Labor (DOL), and the N.C. Office of Economic Recovery and Investment (OERI). Given the rapidity with which funds must be disbursed under the Act, and the subsequent development of implementation requirements, Recipients are subject to changes to these requirements that may, from time to time, be issued subsequent to issuance of this RFP by implementing Federal and State agencies, through directives or otherwise, as they may apply to Recipient's funding and related performance. Recipients are required to reflect all of the foregoing requirements in their agreements with sub-recipients at any tier to the extent necessary to ensure the compliance with the requirements.

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related OMB Guidance. Applicants for projects funded by sources other than the Recovery Act should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act. Funding provided through the Recovery Act that is supplemental to an existing grant is one-time funding.

## **SCOPE OF WORK**

Responders shall complete the application and project scope document attached at the end of this document. Choose the correct form based on whether there are multiple buildings having the same measure performed or multiple measures in the same building. If funding for more than one project is requested, prioritize the projects so that, if all projects cannot be funded, we can fund those with the highest priority. For a project to receive final approval, design documents shall be made available for inspection, as appropriate, and quotations shall be submitted with the response. Participants will be limited to a maximum of \$200,000 (two hundred thousand) total for all projects.

- The projects must be feasible, with a strong, demonstrated economic return on investment including the use of local contractors for implementation.
- The responder must submit a current Strategic Energy Plan to the State Energy Office. The goals identified in the plan should include energy conservation items requested under this proposal. Training and on-site technical assistance in the preparation of a plan is available from the State Energy Office.
- The responders must provide a statement confirming that the systems upgraded under this program will be operated to prevent reversion to a condition of energy waste. Key maintenance staff must receive appropriate training to maintain the system(s) installed or upgraded.
- Responders that leverage other funding sources, the use of in house resources and/or have already performed the design work and obtained quotations from local contractors for implementing the energy conservation measures will be given preference.
- A non-binding quote for the proposed work must be included. Local contractors must be noted.

- Grant proceeds shall not be used on an existing contract; federal law prohibits supplanting previously committed funds.

#### Monitoring and Verifying Project Results:

- Projects shall include measuring and documenting the energy consumption of the building systems included in the project.
- System energy consumption should be measured prior to project implementation to establish baseline.
- System energy consumption should be measured after project implementation to validate energy savings calculations.
- All projects are required to have Monitoring and Verification, please include estimate of pre- and post-installation expense.

#### Payments to Participants:

- Participants with approved projects shall receive reimbursement for submitted, paid invoices for approved project costs up to 95% of the approved project amount. The paid invoices shall be submitted with the monthly payment request form and monthly narrative containing all information required to be in compliance with ARRA reporting requirements.
- Participants shall then receive reimbursement for submitted, paid invoices for approved project costs up to 95% of the approved project amount. The paid invoices shall be submitted with the monthly payment request form and monthly narrative containing all information required to be in compliance with ARRA reporting requirements.
- Upon final acceptance of the project and receipt of all required documentation, the remaining 5% will be paid.

The State Energy Office shall have access to the project site and all relevant documents prior to bid award, during implementation and after project acceptance to satisfy Department of Energy reporting, monitoring and verification requirements.

#### Public notice

Participants using recovery funds for the purposes of soliciting bids, proposals, construction projects, including design services exceeding \$5,000 must advertise the opportunity in the local newsprint outlets including minority and women owned outlets. The State Energy Office maintains a list of minority and women owned newsprint outlets.

**NOTE:** All pages and paragraphs/sections must be numbered for easy reference.

## THE PROCUREMENT PROCESS

The following is a general description of the process by which a Responder will be selected to provide services.

1. Request for Proposals (RFP) is issued to prospective local governmental units.
2. A pre-proposal conference and/or deadline for written questions are set. (See cover sheet of this RFP for details.)
3. Proposals in **one original, one hard copies and one electronic copy** (Microsoft Office format) will be received from each offeror in a sealed envelope or package. Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.
4. All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.
5. At that date and time the package containing the proposals from each responding firm will be opened publicly and the name of the offeror and cost(s) offered will be announced. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of an offeror's pricing position.
6. At their option, the evaluators may request oral presentations or discussion with any or all offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.
7. Proposals will be evaluated according to completeness, content, and experience with similar projects, ability of the offeror and its staff, and cost.

### Criteria for Evaluating Proposals

1. Jobs Created and/or Retained: (15 pts) <sup>1</sup>
2. Energy Saved or Renewable Energy Generated: (15 pts) <sup>2</sup>
3. Greenhouse Gas Emissions Reduced: (10 pts)
4. Funds Leveraged: (15 pts)
5. Strategic Energy Plan submitted: (MANDATORY)
6. Project Sustainability beyond American Recovery and Reinvestment Act Funding: (15 pts)
7. Aggregated Regional Proposals: (10 pts)
8. Project Timeline: (15 pts)
9. Project Management Capability (including Reporting & Monitoring): (15 pts)
10. Projects in Economically Distressed Counties: (10 pts Tier 1, 5 pts tier 2)
11. County unemployment greater than state average: (5 pts)

Total Points Possible: 125

Responses must have at least 85 points to qualify for award.

1. One full time equivalent Job equals 2,080 hours per year (1 FTE)
  - 2 or fewer full time equivalent jobs created - 10 points
  - More than 2 full time equivalent jobs created - 15 points
2. Energy is based on 5 million BTUs per year per \$1,000 of award
  - a. 5 million BTUs or less 0 points
  - b. 6 million BTUs = 1 point
  - c. 1 additional point per million BTUs with a maximum of 15 points

8. Award of a contract to one offeror does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous to the State.
  
9. Responders are cautioned that this is a request for proposals, not a request to contract, and the State reserves the unqualified right to reject any and all proposals when such rejection is deemed to be in the best interest of the State.

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

(Note: The phrase “prospective lower tier participant,” means providers under contract with the Department).

1. By signing and submitting this document, **the prospective lower tier participant** is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the State and/or Federal Government, the department or agency with which this transaction originates may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this document that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the State and/or Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

---

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any State and/or Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____	_____
Signature	Title
_____	_____
Agency/Organization	Date

(Certification signature should be same as Contract signature).

## PROPOSAL REQUIREMENTS

The response to this RFP shall consist of the following sections:

Organization Background and Experience  
Project Staffing and Organization  
Technical Approach

### 1. Organization Background and Experience

This section shall include background information on the organization and should give details of experience with similar projects.

### 3. Project Organization

The responder shall provide information as to the qualifications and experience of all personnel to be assigned to this project, citing experience with similar projects and the responsibilities to be assigned to each person.

### 4. Technical Approach

This section shall include, the completed application and scope of work form at the end of this document. A description of how each subcontractor shall be or has been selected shall be included.

### 5. Outsourcing

The responder must detail the manner in which it intends to utilize resources or workers located outside of the United States, and the State of North Carolina will evaluate the additional risks, costs and other factors associated with such utilization to make the award for this proposal as deemed by the awarding authority to be in the best interest of the State.

For any proposed or actual utilization or contract performance outside of the United States, the offeror's proposal must include:

- a) The location of work performed under a state contract by the vendor, any subcontractors, employees, or other persons performing the contract.
- b) The organization's structure and location of employees and activities of the vendors, its affiliates or any subcontractors.

The State may initiate proceedings to debar a vendor from participation in the bid process and from contract award as authorized by North Carolina law, if it is determined that the vendor has refused to disclose or has falsified any information provided herein.

***NOTE: A cost summary sheet should be included for evaluation.  
Make the format very clear so you are not "comparing apples and oranges".***

**COST PROPOSAL/EXECUTION OF PROPOSAL**

By submitting this proposal, the potential contractor certifies the following:

This proposal is signed by an authorized representative of the organization.

It can obtain insurance certificates as required within 10 calendar days after notice of award.

The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.

All labor costs, direct and indirect, have been determined and included in the proposed cost.

The offeror has attended the pre-bid conference/site visit and is aware of prevailing conditions associated with performing these services *(if applicable)*.

The offeror can and will provide the specified performance bond or alternate performance guarantee *(if applicable)*.

The potential contractor has read and understands the conditions set forth in this RFP and attachments and agrees to them with no exceptions.

The offeror is registered in NC E-Procurement @ Your Service or agrees to register within two days after notification of contract award.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 90 days from the date of the opening, to furnish the subject services for an award not to exceed \$ \_\_\_\_\_.

OFFEROR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

Principal Place of Business if different from above (See General Information on Submitting Proposals, Item 18.):

\_\_\_\_\_

Will any of the work under this contract be performed outside the United States?  Yes  No  
(If yes, describe in technical proposal.)

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

\*\*\*\*\*

**ACCEPTANCE OF PROPOSAL**

*(Using Agency Name)*

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

**THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL.**

Unsigned proposals will not be considered.



## GENERAL INFORMATION ON SUBMITTING PROPOSALS

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation.

**Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.**

2. **CERTIFICATION:** By executing the proposal, the signer certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.
3. **ORAL EXPLANATIONS:** The State shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
4. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
5. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

**It is desirable that all responses meet the following requirements:**

- All copies are printed **double sided**.
  - All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
  - Unless absolutely necessary, all proposals and copies should **minimize or eliminate use of non-recyclable or non re-usable 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 and recycling** of paper materials.
  - One electronic copy must be provided in addition to the original and two hard copies.
6. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the State of North Carolina will not reimburse any offeror for any costs incurred prior to award.
  7. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of 90 days. Although the contract is expected to be awarded prior to that time, the 90 day period is requested to allow for unforeseen delays.
  8. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
  9. **CONFIDENTIALITY OF PROPOSALS:** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing agency, government or private, until after the award of the contract. Offerors not in compliance with this provision may be disqualified, at the option of the State, from contract award. Only discussions authorized by the issuing agency are exempt from this provision.

10. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the State when received.
11. **OFFEROR'S REPRESENTATIVE:** Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
12. **SUBCONTRACTING:** Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor. All Federal and State reporting requirements will apply to any subcontract.
13. **PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.
14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
15. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When an offeror wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Contract status and Award notices are posted on the Internet at <http://www.pandc.nc.gov/>. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.pandc.nc.gov/protests.pdf> for more information.)
16. **TABULATIONS:** The Division has implemented an Interactive Purchasing System (IPS) that allows the public to retrieve bid tabulations electronically from our Internet web site: <http://www.pandc.nc.gov/>. Click on the IPS BIDS icon, click on Search for Bid, enter the RFP number, and then search. Tabulations will normally be available at this web site not later than one working day after opening. Lengthy tabulations may not be available on the Internet, and requests for these verbally or in writing cannot be honored.
17. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on our Internet web site: <http://www.pandc.nc.gov/>.
18. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident offerors. The "Principal Place of Business" is defined as the principal place from which the trade or business of the offeror is directed or managed.

**NORTH CAROLINA STANDARD GENERAL CONTRACT TERMS AND CONDITIONS  
(Contractual and Consultant Services)**

**NOTE: For “Agency”, substitute “Department”, “University”, etc., as applicable.**

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
2. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined
3. **INDEPENDENT CONTRACTOR:** The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.
4. **KEY PERSONNEL:** The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Agency’s Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified in the Contractor’s proposal.
5. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Agency’s Contract Administrator. Acceptance of an offeror’s proposal shall include any subcontractor(s) specified therein.
6. **PERFORMANCE AND DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, the Agency shall thereupon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined.

In case of default by the Contractor, the State may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State reserves the right to require a performance bond or other acceptable alternative performance guarantees from successful offeror without expense to the State.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business

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 by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

7. **TERMINATION:** The Agency may terminate this agreement at any time by *30 days* notice in writing from the Agency to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Agency, become its property. If the contract is terminated by the

Agency as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.

8. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice(s) or acceptance of services, whichever is later, or in accordance with any special payment schedule identified in this RFP. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, MasterCard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
9. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Agency for the purpose set forth in this agreement.
10. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency.
11. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the State for loss of damage of such property.
12. **COPYRIGHT:** No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
13. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.

The Contractor shall retain all records for a period of three years following completion of the contract.

14. **ASSIGNMENT:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:
  - a. Forward the contractor's payment check(s) directly to any person or entity designated by the Contractor, or
  - b. Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.
15. **COMPLIANCE WITH LAWS:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
16. **AFFIRMATIVE ACTION:** The Contractor shall take affirmative action in complying 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 by reason of race, color, religion, sex, national origin, or disability.
17. **INSURANCE:** During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:
  - a. Worker's Compensation - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If

any work is subcontracted, the contractor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.

b. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability).

c. Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. 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 the contract.

18. **ADVERTISING:** The offeror shall not use the award of a contract as part of any news release or commercial advertising.
19. **ENTIRE AGREEMENT:** This contract 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 Request for Proposals, any addenda thereto, and the offeror's 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.

20. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the Agency and the Contractor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.
21. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
22. **GENERAL INDEMNITY:** The contractor shall hold and save the State, 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 this 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 contractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

23. **OUTSOURCING:** Any vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided. If, after award of a contract, the contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the State agency responsible for the contract. Vendor must give notice to the using agency of any relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the United States.
24. **By EXECUTIVE ORDER 24**, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:
- (1) have a contract with a governmental agency; or
  - (2) have performed under such a contract within the past year; or
  - (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.”

11/16/2009

## **CONTRACT PROVISIONS**

By submission of a proposal, Contractor agrees to comply with the following provisions. Failure to comply with any and all provisions herein may be cause for the contracting agency to issue a cancellation notice to a contractor.

### **Reporting Requirements**

The Contractor is notified that this project will be financed with *American Recovery and Reinvestment Act of 2009* (hereinafter, "ARRA") Funds. The Contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the State shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the Contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

### **Posting with the Local Employment Security Commission**

In addition to any other job postings the Contractor normally utilizes, the Office of Economic Recovery & Investment (hereinafter, "OERI") requires that the Contractor shall post with the local Employment Security Commission Office all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semiskilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum posting of five days before the hiring decision. The Contractor and any Subcontractor shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI.

### **Required Contract Provision to Implement ARRA Section 902**

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

### **Authority of the Inspector General provision**

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

### **Buy American provision**

Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be manufactured in the United States. Contractor agrees to abide by this provision and shall maintain records of such purchases for inspections by authorized agents of the State of North Carolina and federal agencies. The Contractor must obtain written exception from this provision from the agency issuing the contract.

### **Wage Rate Provision**

Section 1606 of the ARRA requires that all laborers and mechanics employed by contractors and subcontractors with funds from the ARRA shall be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. The contractor agrees that by the submission of a proposal in response to a solicitation funded in whole or in part with recovery funds, continuous compliance will be maintained with the Davis-Bacon Act including but not limited to weekly reporting of all wage information.

### **Availability and Use of Funds**

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

### **Whistleblower Provisions**

Contractors understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 95-245 (applies to anyone, including state employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees.

### **Outsourcing outside the USA without Specific Prior Approval Provision**

Contractor agrees not to use any recovery funds from a contract or any other performance agreement awarded by the State of North Carolina, its agencies, or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.

### **Federal, State and Local Tax Obligations**

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

### **Anti-Discrimination and Equal Opportunity**

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

### **Office of State Budget and Management Access to Records**

OERI requires that the contractor and subcontractor agree to allow the Office of State Budget and Management internal auditors and state agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency.

### **The National Environmental Policy Act (NEPA)**

Recipients of funding appropriated by the Act shall comply with The National Environmental Policy Act (NEPA). NEPA requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. Each Recipient shall complete the NEPA checking list at the discretion of the State Energy Office. Failure to complete this list will cause rejecting the Recipient from possible funding.

### **The National Historic Preservation Act - Section 106**

Recipients of funding appropriated by the Act shall comply with the State and the National Historic Preservation Act. This applies to all buildings in a historic district, any building on the historic register, any building which has applied for historic designation, and any building over 50 years.

Attachment 1  
**ENERGY EFFICIENCY APPLICATION and PROJECT SCOPE**  
Single Building

**Note: Attach quotations and state how design documents may be accessed.**

Date: \_\_\_\_\_

Name of Institution: \_\_\_\_\_

Contact Person \_\_\_\_\_ Title \_\_\_\_\_

Address \_\_\_\_\_

City/County/Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Building Identification: \_\_\_\_\_

Built in: \_\_\_\_\_ Last renovated \_\_\_\_\_ National Historic Register \_\_\_\_\_

Building Total Square Footage: \_\_\_\_\_ sq. ft.

Is building sub-metered and are meter readings available \_\_\_\_\_

Jobs: # of people \_\_\_\_\_ # of hours \_\_\_\_\_ Project cost \$ \_\_\_\_\_

Amt Requested \$ \_\_\_\_\_ Leveraged \$ \_\_\_\_\_ Source \_\_\_\_\_

Estimated savings and/or energy generated \$ \_\_\_\_\_ units \_\_\_\_\_

Monitoring and Verification \$ \_\_\_\_\_

Project start date \_\_\_\_\_ end date \_\_\_\_\_

**Project Description**

(Include a short description of the proposed project including problems to be addressed and technologies/equipment that may be required)

Attachment 1  
**ENERGY EFFICIENCY APPLICATION and PROJECT SCOPE**  
Multiple Buildings Single Measure

**Note: Attach quotations and state how design documents may be accessed.**

Date: \_\_\_\_\_ Name of Institution: \_\_\_\_\_

Contact Person \_\_\_\_\_ Title \_\_\_\_\_

Address \_\_\_\_\_

City/County/Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Project Location: \_\_\_\_\_  
\_\_\_\_\_

Total Square Footage: \_\_\_\_\_ sq. ft. Any buildings on Historic Register \_\_\_\_\_

Are buildings sub-metered and are meter readings available \_\_\_\_\_

Jobs: # of people \_\_\_\_\_ # of hours \_\_\_\_\_ Project cost \$ \_\_\_\_\_

Amt Requested \$ \_\_\_\_\_ Leveraged \$ \_\_\_\_\_ Source \_\_\_\_\_

Estimated savings and/or energy generated \$ \_\_\_\_\_ units \_\_\_\_\_

Monitoring and Verification \$ \_\_\_\_\_

Project start date \_\_\_\_\_ end date \_\_\_\_\_

**Project Description**

(Include a short description of the proposed project including problems to be addressed and technologies/equipment that may be required)