

TERMS AND CONDITIONS

1. DEFAULT AND PERFORMANCE BOND: In case of default by the contractor, the City of Wilson may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby. The City of Wilson reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to the City of Wilson.
2. GOVERNMENTAL RESTRICTIONS: In the event any Governmental restrictions are imposed which necessitate alternation of the material, quality, workmanship or performance of the items prior to delivery, it shall be the responsibility of the contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation, which required such alterations. The City of Wilson reserves the right to accept any such alternations, including any price adjustments occasioned thereby, or to cancel the contract.
3. AVAILABILITY OF FUNDS: Any and payments to the contractor are dependent upon and subject to the availability of funds to the City for the purpose set forth in this agreement.
4. TAXES: Any applicable taxes shall be invoices as a separate item. The City is not exempt from local or North Carolina sales tax.
5. 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.
6. GOVERNING LAWS: This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
7. INSPECTION AT CONTRACTOR'S SITE: The City of Wilson reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for the City of Wilson's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
8. PAYMENT TERMS: Payment terms are Net 30 after receipt of correct invoice or acceptance of goods, whichever is later.
9. AFFIRMATIVE ACTIVE: The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical handicap.
10. CONDITION AND PACKAGING: Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
11. STANDARDS: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or reexamination listing or identification marking of the appropriated safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriter's Laboratories and / or National Electrical Manufacturers' Association of electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHS), and state and federal requirements relating to clean air, and water pollution.
12. PATENT: The contractor shall hold and save the City of Wilson, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including used by the government.
13. ADVERTISING: Contractor agrees not to use the existence of this contract, the name of the City of Wilson as part of any commercial advertisement.

14. ACCESS TO PERSONS AND RECORDS: An independent auditor shall have access to persons and records as a result of all contracts or grants entered into by the City of Wilson in accordance with General Statute 147-64.7.
15. ASSIGNMENT: No assignment of the contractor's obligations nor the contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority and solely as a convenience to the contractor, the City of Wilson may:
 - a. Forward the contractor's payment check directly to any person or entity designated by the contractor, and
 - b. Include any person or entity designated by contractor as a joint payee on the contractor's payment check. In no event shall such approval and action obligate the City of Wilson to anyone other than the contractor and the contractor shall remain responsible for fulfillment of all contract obligations.

16. INSURANCE:

COVERAGE – 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 contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his 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 the 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 uninsured/under insured motorist; and \$1,000.00 medical payment.

REQUIREMENTS: 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 terms of such insurance policies, and all requirements of the insurer under any such insurance policy, 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.

17. CANCELLATION (TERM CONTRACTS ONLY): All contract obligations shall prevail for at least 180 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party giving 30 days prior notice in writing to the other party. Such notice of cancellation, as required herein, shall be transmitted via U.S. MAIL, Certified, and Return Requested. The 30 days notice for cancellation shall begin on the day the return receipt is signed and dated.
18. QUANTITIES (TERM CONTRACT ONLY): The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.
19. PRICE ADJUSTMENTS (TERM CONTRACT ONLY): Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the contractor to other customers.

- a. Notification: Must be given to the Purchasing Department, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
- b. Decreases: The City of Wilson shall receive full proportionate benefit immediately at any time during the contract period.
- c. Increased: All prices shall be firm against increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with the City of Wilson reserving the right to reject the increase, or cancel the contract. Such action by the City of Wilson shall occur not later than 15 days after the receipt by the City of Wilson of a properly documented request for price increase. Any increase accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the requested price increase.
- d. Invoice: It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.