

## **ADVERTISEMENT FOR QUOTATIONS**

Sealed quotations will be received in the Office of the Procurement Coordinator, Greenville Utilities Commission, 401 S. Greene Street, Greenville, North Carolina 27834 until 2:00 PM (EDST) on February 9, 2017 and immediately thereafter publicly opened and read for the furnishing of Assessment and Penetration Services.

Instructions for submitting Quotations and complete specifications will be available in the Office of the Procurement Coordinator, Greenville Utilities Commission, 401 S. Greene Street, Greenville, North Carolina during regular office hours, which are 8:30AM – 5:00PM Monday through Friday.

Greenville Utilities Commission reserves the right to reject any or all Quotations. Late Quotations will not be accepted.

## SECTION I

### GENERAL INSTRUCTIONS FOR FORMAL QUOTATIONS

### RELATED TO THE PURCHASE OF APPARATUS, SUPPLIES,

### MATERIALS, EQUIPMENT AND SERVICES

#### **1.0 NOTICE TO PROPOSERS**

Sealed Quotations, subject to the conditions made a part hereof, will be received in the Office of the Procurement Coordinator, Greenville Utilities Commission, 401 S. Greene Street, Greenville, North Carolina 27834 until 2:00 PM (EDST) on February 9, 2017, the day of opening. **Quotations submitted in a fax or e-mail in response to this Invitation for Quotations will not be acceptable. Late Quotations will not be considered.**

#### **2.0 STANDARD FORMS REQUIRED**

Each proposer must submit a quotation on the enclosed quotation forms. **The quotation must be signed by an authorized official of the firm. Return only the attached Quotation Form. Do not return the Advertisement for Quotations, Instructions to Proposers or Specifications.**

#### **3.0 PREPARATION OF QUOTATION**

Quotations must be in sealed envelopes clearly marked on the outside with the name of the quotation and the quotation opening date and time. Quotation shall be addressed to PROCUREMENT COORDINATOR, GREENVILLE UTILITIES COMMISSION, P. O. BOX 1847, 401 S. GREENE STREET, GREENVILLE, NORTH CAROLINA 27835-1847.

#### **4.0 TIME FOR OPENING QUOTATIONS**

Quotations will be opened promptly and read at the hour and on the date set forth in the advertisement in the Office of the Procurement Coordinator, Greenville Utilities Main Office, 401 S. Greene Street, Greenville, North Carolina. Proposers or their authorized agents are invited to be present.

#### **5.0 DEPOSIT**

A deposit is **NOT** required for this quotation.

#### **6.0 NC SALES TAX**

Do **not** include NC sales taxes in quotation figure; however, Greenville Utilities Commission (GUC) does pay sales tax. Sales tax should be added to the invoice as a separate item.

#### **7.0 FEDERAL EXCISE TAX**

GUC is exempt from Federal Excise Tax and will issue a Federal Exemption Certificate upon request to the successful proposer.

## **8.0 EXCEPTIONS TO BE CLEARLY STATED**

If quotation is not in strict accordance with Section II, "Specifications," proposer must list or note all exceptions **on the Request for Quotation Form**, otherwise, it is fully understood that the successful proposer will furnish equipment and/or materials exactly as specified. GUC reserves the right to accept or reject Quotations with noted minor deviations from specifications and to determine the lowest responsible, responsive quotation from the standpoint of quality, performance, and price.

## **9.0 EVALUATION AND AWARD OF QUOTATIONS**

GUC reserves the right to reject any and all Quotations, to waive any and all informalities, and to disregard all nonconforming or conditional Quotations or counter quotations. In evaluating Quotations, GUC shall consider whether the Quotations comply with the prescribed requirements, plus all alternates or options requested. GUC reserves the right to include or exclude any option or alternative in GUC's opinion is in GUC's best interests. If a quotation is to be awarded, it will be awarded to the lowest responsible, responsive proposer whose evaluation by GUC indicates that the award will be in GUC's best interests. Only firm prices will be considered for award of this quotation.

## **10.0 PROMPT PAYMENT DISCOUNTS**

Proposers are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it may be considered in the award of the contract.

## **11.0 NUMERICAL ERRORS**

In the case of a discrepancy between a unit price and the extension (the unit price multiplied by the number of units), the unit price governs. In the case where numerical Quotations are stated both in numbers and in words, the words govern.

## **12.0 QUOTATION WITHDRAWAL**

A proposer must notify GUC in writing of its request to withdraw a quotation within seventy-two (72) hours after the quotation opening, not including Saturdays, Sundays, or holidays. In order to justify withdrawal, the proposer must demonstrate that a substantial error exists and that the quotation was submitted in good faith.

## **13.0 MINORITY BUSINESS PARTICIPATION PROGRAM**

GUC has adopted an Affirmative Action and Minority and Women Business Enterprise Plan (M/WBE) Program. Firms submitting a quotation are attesting that they also have taken affirmative action to ensure equality of opportunity in all aspects of employment, and to utilize M/WBE suppliers of materials and/or labor.

## **14.0 QUANTITIES**

Quantities specified are only estimates of GUC's requirements. GUC reserves the right to purchase more or less than the stated quantities at prices indicated in the submitted Quotation Form based on our actual needs.

## **15.0 DELIVERY**

**Shipments will be made to GUC only upon releases from a purchase order issued by GUC in accordance with its current needs.**

Time is of the essence with respect to all deliveries under this Agreement.

Delivery of all equipment, materials, or supplies shall be made Free on Board (FOB) GUC Warehouse, 801 Mumford Road, Greenville, North Carolina 27834, unless otherwise specified.

The agreed price for such equipment, materials, or supplies shall include all costs of delivery and ownership, and risks of loss shall not be transferred from Provider to GUC until express written acceptance of delivery and inspection by GUC. Delivery hours are between 8:00 AM and 4:30 PM Monday-Friday only. **GUC's purchase order number is to be shown on the packing slip or any related documents.** GUC reserves the right to refuse or return any delivery with no purchase order number or which is damaged. GUC will not be charged a restocking fee for any delivery which is refused or returned.

## **16.0 DELIVERY TIME**

Delivery time is to be stated by the proposer and will be a factor in the evaluation of Quotations.

## **17.0 CONTRACT PERIOD**

NA

## **18.0 MANUFACTURER**

Proposer is to specify the manufacturer of items being quoted.

## **19.0 CONTACT INFORMATION**

Questions regarding this quotation request should be directed to Cleve Haddock, Procurement Coordinator, Finance Department at (252) 551-1533, [haddocgc@guc.com](mailto:haddocgc@guc.com).

## **20.0 TERMS AND CONDITIONS**

**The attached Terms and Conditions apply to all purchases made by Greenville Utilities Commission (GUC) and must be considered as part of the quotation.**

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## SECTION II

### GREENVILLE UTILITIES COMMISSION

#### SPECIFICATIONS FOR ASSESSMENT AND PENETRATION SERVICES

FEBRUARY 9, 2017

##### Description of Services

Greenville Utilities Commission (GUC) is seeking proposals for vulnerability assessment and penetration testing services for GUC's internal network systems, wireless networks, firewalls and SCADA systems. We would prefer line item quoting on each item. The following items are expected to be in scope:

- Identify vulnerabilities on a minimum of 20 identified network infrastructure devices that could include any of the following: switches, routers, WAPS and /or firewalls
- Perform a configuration review of the utilities' four firewalls including the IDS deployments
- Perform a general wireless network penetration test on the corporate wireless networks
- Exploit known vulnerabilities to gain access to the four identified SCADA networks
- Exploit known vulnerabilities on systems running identified Oracle enterprise systems of a replicated environment – OUCSS, SOA, CC&B, MWM, and WAM

##### Assumptions

- You will assume the role of an attacker that has gained access to a device on the corporate network
- Gaining access to SCADA is assumed as soon as administrative access is proven; basic architectural information will be provided for scoping purposes
- Gaining access and information from enterprise systems will be proven once the following is achieved 1) Disrupt or interfere with normal operational activities and/or 2) Capture valuable customer information
- Expectation is not to disrupt any services in the exploitation attempt
- Expectation is to maintain strict confidentiality during this engagement and we expect the proposer will destroy all information, reports, etc... at the end of the engagement
- GUC will be notified when testing is initiated and completed

##### Deliverables

- Proposer should provide services in accordance with the items identified in the Description of Services section above
- Proposer should provide a final report containing a minimum of the following:
  - Listing of all activities performed including specific exploitation methods for penetration test components with proof
  - List of findings as compared to known GUC policies or practices

- List of areas where identified GUC Policies, practices, or Configurations diverge from accepted secure or best practices.
- Recommended actions to close security gaps discovered through scans, reviews and/or penetration testing scenarios
- Overall statement about security of each SOW item – Risk Assessment

Questions concerning this RFQ or requests for additional information must be E-mailed to: Cleve Haddock, CLGPO, Procurement Coordinator at haddocgc@guc.com no later than **February 1, 2017** at 5:00 p.m. local time. Greenville Utilities Commission will not be responsible for or bound by any oral instructions made by an employee(s) of GUC regarding this RFQ.

**SUBMIT QUOTATIONS ON ATTACHED QUOTATION FORM(S)**

[Balance of page left blank intentionally]

**GREENVILLE UTILITIES COMMISSION**

**QUOTATION FORM**

The undersigned proposer hereby declares that it has carefully examined the enclosed detailed specifications for furnishing GUC with the below listed Services/Items. The undersigned proposer further agrees, if this quotation is accepted within sixty (60) days from the date of the opening, to furnish any or all of the Services/Items upon the quoted price.

- Identify vulnerabilities on a minimum of 20 identified network infrastructure devices that could include any of the following: switches, routers, WAPS and /or firewalls

\$ \_\_\_\_\_

- Perform a configuration review of the utilities' four firewalls including the IDS deployments

\$ \_\_\_\_\_

- Perform a general wireless network penetration test on the corporate wireless networks

\$ \_\_\_\_\_

- Exploit known vulnerabilities to gain access to the four identified SCADA networks

\$ \_\_\_\_\_

- Exploit known vulnerabilities on systems running identified Oracle enterprise systems of a replicated environment – OUCSS, SOA, CC&B, MWM, and WAM

\$ \_\_\_\_\_

**Please provide at least three (3) references with contact information:**

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**Proposers must have a minimum of three (3) years experience providing the requested services**

\_\_\_\_\_ Number of years providing the requested services.

**Method of Award:** Items I through V will be awarded in part or as a total quote.

**Complete and Check All Math:** It is the responsibility of the Proposer to extend quotation prices and supply a total for all Services/Items.

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It is certified that this quotation is made in good faith and without collusion or connection with any other person quoting on the same above Services/Listed items. It is also certified that this quotation is made in good faith and without collusion or connection with any GUC employee(s).

Certified check or cash for \$       n/a       or quotation bond for \$       n/a       attached.

Firm Name \_\_\_\_\_ Phone ( \_\_\_\_\_ ) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Fax ( \_\_\_\_\_ ) \_\_\_\_\_ E-Mail \_\_\_\_\_

Authorized Official \_\_\_\_\_ Title \_\_\_\_\_

Typed Name

\_\_\_\_\_ Date \_\_\_\_\_

Signature

**Three (3) copies of your quotation should be received no later than  
February 9, 2017 at 2:00 PM (EDST).**

**NO QUOTATIONS CONSIDERED UNLESS SUBMITTED ON THIS FORM(S)**

**(RETURN ONLY THESE FORM(S))**

**GREENVILLE UTILITIES COMMISSION**

**EXCEPTION FORM**

**ASSESSMENT AND PENETRATION SERVICES**

**Provider's Certification:** This is to certify that it is our intent to furnish equipment, material, services, etc. in absolute compliance with the quotation specification except where expressly noted below.

**Instructions:** List all exceptions or variations to these quotation specifications. Providers shall identify each exception or variation by specification page. The omission of exception or variation information shall be deemed by the Commission as the Provider's intent to absolutely comply with the quotation specification. If additional space is required, Provider may reproduce this form as necessary.

<u>Page #</u>	<u>Exception/Variation</u>
_____	_____
_____	_____
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_____	_____
_____	_____
_____	_____
_____	_____

Authorized Signature of Certification: \_\_\_\_\_

Print Name: \_\_\_\_\_

Firm Represented: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

## Letter of Compliance to E-Verify for Greenville Utilities Commission

1. I have submitted a quotation for contract or desire to enter into a contract with the Greenville Utilities Commission;
2. As part of my duties and responsibilities pursuant to said quotation and/or contract, I affirm that I am aware of and in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):
3. \_\_\_\_ After hiring an employee to work in the United States I verify the work authorization of said employee through E-Verify and retain the record of the verification of work authorization while the employee is employed and for one year thereafter; or
4. \_\_\_\_ I employ less than twenty-five (25) employees in the State of North Carolina.
5. As part of my duties and responsibilities pursuant to said quotation and/or contract, I affirm that to the best of my knowledge and subcontractors employed as a part of this quotation and/or contract, are in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):
6. \_\_\_\_ After hiring an employee to work in the United States the subcontractor verifies the work authorization of said employee through E-Verify and retains the record of the verification of work authorization while the employee is employed and for one year thereafter; or
7. \_\_\_\_ Employ less than twenty-five (25) employees in the State of North Carolina.

Specify subcontractor: \_\_\_\_\_

\_\_\_\_\_ (Company Name)

By: \_\_\_\_\_ (Typed Name)

\_\_\_\_\_ (Authorized Signatory)

\_\_\_\_\_ (Title)

\_\_\_\_\_ (Date)

RFP Number (if applicable): \_\_\_\_\_

Name of Vendor or Bidder: \_\_\_\_\_  
\_\_\_\_\_

**IRAN DIVESTMENT ACT CERTIFICATION  
REQUIRED BY N.C.G.S. 143C-6A-5(a)**

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As of the date listed below, the vendor or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

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Signature

Date

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Printed Name

Title

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*Notes to persons signing this form:*

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran) and will be updated every 180 days.

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### **SECTION III**

## **TERMS AND CONDITIONS FOR THE PURCHASE OF APPARATUS, SUPPLIES, MATERIALS, EQUIPMENT AND SERVICES**

These Terms and Conditions, made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, by and between GREENVILLE UTILITIES COMMISSION OF THE CITY OF GREENVILLE, PITT COUNTY, NORTH CAROLINA, with one of its principal offices and places of business at 401 S. Greene Street, Post Office Box 1847, Greenville, Pitt County, North Carolina 27835-1847, hereinafter referred to as "GUC" and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, with one of its principal offices and places of business at \_\_\_\_\_, hereinafter referred to as "PROVIDER";

### **1.0 TAXES**

No taxes shall be included in any quotation prices. GUC is exempt from Federal Excise Tax. GUC is not exempt from North Carolina state sales and use tax or, if applicable, Pitt County sales and use tax. Such taxes shall be shown as a separate item on the invoice.

### **2.0 INVOICES**

It is understood and agreed that orders will be shipped at the established contract prices and quantities in effect on dates orders are placed. Invoicing at variance with this provision may subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate line item. All invoices must bear the GUC purchase order number. Mail all invoices to Greenville Utilities Commission, Finance Department, P. O. Box 1847, Greenville, NC 27835-1847.

### **3.0 PAYMENT TERMS**

Payments for equipment, materials, or supplies will be made after the receipt and acceptance of the equipment, materials, or supplies and after submission of a proper invoice. GUC's normal payment policy is thirty (30) days. GUC will not be responsible for any goods delivered without a purchase order having been issued. Payment will be made in U. S. currency only.

### **4.0 QUANTITIES**

Quantities specified are only estimates of GUC's requirements. GUC reserves the right to purchase more or less than the stated quantities at prices indicated in the submitted Quotation Form based on our actual needs.

### **5.0 AFFIRMATIVE ACTION**

The Provider 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 discrimination by reason of race, color, religion, sex, national origin, or physical handicap.

## **6.0 CONDITION AND PACKAGING**

Unless otherwise indicated in the quotation, it is understood and agreed that any item offered or shipped shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging.

## **7.0 SAMPLES**

Samples of items, if required, must be furnished free of expense to GUC, and if not destroyed, will, upon request, be returned at the Provider's expense. Request for the return of samples must be made at the quotation opening, otherwise, the samples will become GUC's property. Each individual sample must be labeled with Provider's name.

## **8.0 SPECIFICATIONS**

Any deviation from specifications must be clearly pointed out, otherwise, it will be considered that items offered are in strict compliance with specifications, and the Provider will be held responsible. Deviations must be explained in detail. **The Provider shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**

## **9.0 INFORMATION AND DESCRIPTIVE LITERATURE**

Providers are to furnish all information requested. Further, as may be specified elsewhere, each Provider must submit with its quotation: cuts, sketches, descriptive literature, and/or complete specifications covering the products offered. Reference to literature submitted with a previous quotation does not satisfy this provision. Quotations which do not comply with these requirements will be subject to rejection.

## **10.0 AWARD OF CONTRACT**

As directed by statute, qualified Quotations will be evaluated and acceptance made of the lowest responsible, responsive quotation most advantageous to GUC as determined upon consideration of such factors as prices offered, the quality of the article(s) offered, the general reputation and performance capabilities of the Provider, substantial conformity with the specifications and other conditions set forth in the quotation, the suitability of the article(s) for the intended use, the related services needed, the date(s) of delivery and performance, and such other factors deemed by GUC to be pertinent or peculiar to the purchase in question.

Acceptance of the order includes acceptance of all terms, conditions, prices, delivery instructions, and specifications as shown on this set of Terms and Conditions and in this order or attached to and made a part of this order.

The conditions of this order cannot be modified except by written amendment in the form of "Amended Purchase Order," which has been approved by GUC's Procurement Coordinator.

In the event of a Provider's failure to deliver or perform as specified, GUC reserves the right to cancel the order or any part thereof, without prejudice to GUC's other rights. The Provider agrees that GUC may return part of or all of any shipment at Provider's expense. GUC may charge the Provider with all reasonable expenses resulting from such failure to deliver or perform.

## **11.0 MEDIATION/BINDING ARBITRATION**

In the event of any dispute between the Parties, the Parties agree to submit any dispute to non-binding mediation before a mutually agreeable Mediator prior to initiating litigation. If the Parties are unable to agree upon a Mediator within thirty (30) days after demand therefore, either Party may petition a Court of competent jurisdiction for the designation of a qualified Mediator for these purposes. Each Party shall bear its own costs and expenses of participating in the mediation (including, without limitation, reasonable attorneys' fees), and each Party shall bear one-half (1/2) of the costs and expenses of the Mediator. Unless otherwise agreed, the Parties will hold the mediation in Greenville, North Carolina. The matters discussed or revealed in the mediation session shall not be disclosed in any subsequent litigation.

In the event the matter is not resolved in mediation, either Party may request arbitration. The parties shall jointly select an Arbitrator, and shall be bound by the decision of the Arbitrator with respect to any dispute between the parties with respect to this Agreement. If the parties are unable to mutually agree upon an Arbitrator, the Parties shall each select an Arbitrator, and the two Arbitrators so selected shall select a third Arbitrator, and the decision of the majority of the Arbitrators shall be conclusive and binding upon the Parties. The Parties at all times agree to equally split the costs of any Arbitrator(s) selected in an effort to resolve the dispute between the Parties. Any party desiring to resolve a dispute under the terms of this Agreement shall notify the other Party in writing, and the Parties shall seek to agree upon a mutually agreed-upon Arbitrator within a period of ten (10) days from the date of such written demand. If the Parties are unable to agree within such ten (10) day period, the Parties shall each select an Arbitrator, and the two (2) Arbitrators so selected shall select a third Arbitrator within fifteen (15) days from the date of the written demand for arbitration, and a decision shall be rendered by the Arbitrator(s) so selected within five (5) days after such Arbitrator(s) is selected.

## **12.0 GOVERNMENT RESTRICTIONS**

In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this quotation prior to their delivery, it shall be the responsibility of the successful Provider to notify the GUC Procurement Coordinator, at once, indicating in its letter the specific regulation which required such alterations. GUC reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or, in the sole discretion of GUC, to cancel the contract.

## **13.0 INSURANCE**

**13.1 Coverage** – During the term of the contract, the Provider at its sole cost and expense shall provide commercial insurance of such type and with the following coverage and limits:

**13.1.1 Workers' Compensation** – The Provider shall provide and maintain Workers' Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$1,000,000 each accident, covering all Provider's employees who are engaged in any work under the contract. If any work is sublet, the Provider shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.

**13.1.2 General Liability** – Commercial Liability Coverage written on an “occurrence” basis in the minimum amount of \$1,000,000 per occurrence.

**13.1.3 Automobile** – Automobile Liability Insurance, to include coverage for all owned, hired, and non-owned vehicles used in connection with the contract with a minimum combined single limit of \$1,000,000 per accident.

**13.2 Requirements** - Providing and maintaining adequate insurance coverage is a material obligation of the Provider. 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 to do business in North Carolina by the Commissioner of Insurance. The Provider shall at all times comply with the terms of such insurance policies and all requirements of the insurer under any of 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 Provider shall not be interpreted as limiting the Provider’s liability and obligations under the contract. It is agreed that the coverage as stated shall not be canceled or changed until thirty (30) days after written notice of such termination or alteration has been sent by registered mail to GUC’s Procurement Coordinator.

#### **14.0 PATENTS AND COPYRIGHTS**

The Provider shall hold and save GUC, its officers, agents, and employees, harmless from liability of any kind, including costs and expenses, including reasonable attorney fees, on account of any copyrighted articles or any patented or unpatented invention, device or appliance manufactured or used in the performance of this contract.

#### **15.0 PATENT AND COPYRIGHT INDEMNITY**

The Provider will defend or settle, at its own expense, any action brought against GUC to the extent that it is based on a claim that the product(s) provided pursuant to this agreement infringe any U.S. copyright or patent; and will pay those costs, damages, and attorney fees finally awarded against GUC in any such action attributable to any such claim, but such defense, settlements, and payments are conditioned on the following: (1) that Provider shall be notified

promptly in writing by GUC of any such claim; (2) that Provider shall have sole control of the defense of any action on such claim and of all negotiations for its settlement or compromise; (3) that GUC shall cooperate with Provider in a reasonable way to facilitate the settlement of defense of such claim; (4) that such claim does not arise from GUC modifications not authorized by the Provider or from the use of combination of products provided by the Provider with products provided by GUC or by others; and (5) should such product(s) become, or in the Provider’s opinion likely to become, the subject of such claim of infringement, then GUC shall permit Provider, at Provider’s option and expense, either to procure for GUC the right to continue using the product(s), or replace or modify the same so that it becomes non-infringing and performs in a substantially similar manner to the original product.



## **16.0 EXCEPTIONS**

All quotations are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, price catalogs, and other documents as part of a Provider's response will be waived and have no effect on this Request for Quotation or any other contract that may be awarded resulting from this solicitation. The submission of any other terms and conditions by a Provider may be grounds for rejection of the Provider's quotation. The Provider specifically agrees to the terms and conditions set forth in this set of Terms and Conditions by affixing its name on the signatory page contained herein.

## **17.0 CONFIDENTIAL INFORMATION**

Except as provided by statute and rule of law, GUC will keep trade secrets which the Provider does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Provider. Cost information shall not be deemed confidential. The determination of whether a matter is confidential will be determined by North Carolina law.

## **18.0 ASSIGNMENT**

No assignment of the Provider's obligations or the Provider's right to receive payment hereunder shall be permitted without the express written consent of GUC, provided however, upon written request approved by the GUC Procurement Coordinator, solely as a convenience to the Provider, GUC may:

- Forward the Provider's payment check directly to any person or entity designated by the Provider, and
- Include any person or entity designated by Provider as a joint payee on the Provider's payment check.
- In no event shall such approval and action obligate GUC to anyone other than the Provider, and the Provider shall remain responsible for fulfillment of all contract obligations.

## **19.0 ACCESS TO PERSON AND RECORDS**

GUC shall have reasonable access to persons and records of Provider as a result of all contracts entered into by GUC.

## **20.0 INSPECTION AT PROPOSER'S SITE**

GUC reserves the right to inspect, at a reasonable time, the item, plant, or other facilities of a prospective Provider prior to contract award and during the contract term as necessary for GUC's determination that such item, plant, or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract. Provider may limit GUC's access to restricted areas.

## **21.0 AVAILABILITY OF FUNDS**

Any and all payments of compensation of this specific transaction and any continuation or any renewal or extension are dependent upon and subject to the allocation of GUC funds for the purpose set forth in this Agreement.

## **22.0 GOVERNING LAWS**

All contracts, transactions, agreements, etc., are made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

## **23.0 ADMINISTRATIVE CODE**

Bids, quotations, and awards are subject to applicable provisions of the North Carolina Administrative Code.

## **24.0 EXECUTION**

In the discretion of GUC, failure of a duly authorized official of Provider to sign the Signatory Page may render the quotation invalid.

## **25.0 CLARIFICATIONS/INTERPRETATIONS**

Any and all questions regarding these Terms and Conditions must be addressed to the GUC Procurement Coordinator. Do not contact the user directly. **These Terms and Conditions are a complete statement of the parties' agreement and may only be modified in writing signed by Provider and the GUC Procurement Coordinator.**

## **26.0 SITUS**

The place of all contracts, transactions, agreements, their situs and forum, shall be North Carolina, where all matters, whether in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

## **27.0 TERMINATION OF AGREEMENT**

GUC or Provider may terminate this Agreement for just cause at any time. Provider will be paid for all time and expenses incurred as of the termination date. Termination for just cause by either party shall be by certified letter and shall be effective thirty (30) days after signed and acknowledged receipt of said letter. Just cause shall be based on reasonable grounds, and there must be a fair and honest cause or reason for such action. The causes for termination, include, but are not limited to: (1) Provider's persistent failure to perform in accordance with the Terms and Conditions, (2) Provider's disregard of laws and regulations related to this transaction, and/or (3) Provider's substantial violation of the provisions of the Terms and Conditions.

## **28.0 DELIVERY**

**Shipments will be made only upon releases from a purchase order issued by GUC in accordance with GUC's current needs.**

Time is of the essence with respect to all deliveries under this Agreement.

Delivery of all equipment, materials, or supplies shall be made Free on Board (FOB) GUC Warehouse, 801 Mumford Road, Greenville, North Carolina 27834, unless otherwise specified. The agreed price for such equipment, materials, or supplies shall include all costs of delivery and ownership, and risks of loss shall not be transferred from Provider to GUC until express written acceptance of delivery and inspection by GUC. Delivery hours are between 8:00 AM and 4:30 PM Monday-Friday only. **GUC's purchase order number is to be shown on the packing slip or any related documents.** GUC reserves the right to refuse or return any delivery with no purchase order number or which is damaged. GUC will not be charged a restocking fee for any delivery which is refused or returned.

## **29.0 INDEMNITY PROVISION**

Provider agrees to indemnify and save GREENVILLE UTILITIES COMMISSION of the City of Greenville, Pitt County, North Carolina, and the City of Greenville, North Carolina, its co-owners, joint venturers, agents, employees, and insurance carriers harmless from any and all losses, claims, actions, costs, expenses including reasonable attorney fees, judgments, subrogations, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property of whatsoever nature of any person arising out of or incident to the performance of the terms of this Contract by Provider, including, but not limited to, Provider's employees, agents, subcontractors, and others designated by Provider to perform work or services in, about, or attendant to, the work and services under the terms of this Contract. Provider shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, directly, solely, and proximately caused by the negligence of Greenville Utilities Commission of the City of Greenville, Pitt County, North Carolina. Insurance covering this indemnity agreement by the Provider in favor of Greenville Utilities Commission of the City of Greenville, Pitt County, North Carolina, and the City of Greenville, North Carolina, shall be provided by Provider.

## **30.0 FORCE MAJEURE**

Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. In any such event of force majeure, the parties shall advise each other of such event, and the parties shall negotiate an equitable adjustment to their respective obligations under this Agreement.

## **31.0 WARRANTY(IES)**

The Provider hereby includes all warranties, whether expressed or implied, including, but not limited to, the Implied Warranty of Merchantability and the Implied Warranty of Fitness for a Particular Purpose.

### **32.0 INTEGRATED CONTRACT**

These Terms and Conditions, Instructions to Proposers, Specifications, and the selected Provider's quotation represents the entire contract between the Parties. No verbal or other written agreement(s) shall be held to vary the provisions of this Agreement.

### **33.0 CONTRACT PROVISIONS**

Each of the provisions of these Terms and Conditions shall apply to the full extent permitted by law, and the invalidity in whole or in part of any provision shall not affect the remainder of such provision or any other provisions.

### **34.0 NOTICES**

Notices to the Parties should be sent to the names and addresses specified below:

Cleve Haddock, CLGPO  
Procurement Coordinator  
Greenville Utilities Commission  
P.O. Box 1847  
Greenville, NC 27835-1847

Vendor Specified on Page 1 of Section III when awarded.

GREENVILLE UTILITIES COMMISSION

By: \_\_\_\_\_  
Anthony C. Cannon

Title: General Manager/CEO  
(Authorized Signatory)

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

Attest: \_\_\_\_\_

Name (Print): Amy Carson Quinn

Title: Executive Secretary

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

(OFFICIAL SEAL)

COMPANY NAME:

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_  
(Authorized Signatory)

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

Attest: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: Corporate Secretary

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

(CORP. SEAL)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: \_\_\_\_\_  
Jeff W. McCauley

Title: Chief Financial Officer

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

APPROVED AS TO FORM AND LEGAL CONTENT:

By: \_\_\_\_\_  
Phillip R. Dixon

Title: General Counsel

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