

CITY OF WILMINGTON, NC

BID INVITATION

BIDS ARE DUE:

FRIDAY, SEPTEMBER 11, 2020 AT 3:00 PM

BID NAME:

INSTALLATION OF TWO (2) WASTE OIL HEATERS

MANDATORY

PRE-BID MEETING:

**MANDATORY PRE-BID MEETING WILL BE HELD ON
WEDNESDAY, SEPTEMBER 2, 2020 FROM 9:30 A.M. TO 10:30
A.M. MEETING WILL BEGIN AT FLEET SERVICES, 205
OPERATIONS CENTER DRIVE, WILMINGTON, NC 28412**

PROJECT NO.:

CONTRACT NO.:

PB-IH-0820.1

SUBMIT BIDS TO:

PURCHASING DIVISION
P. O. BOX 1810
305 CHESTNUT ST., 5th Floor
WILMINGTON, N. C. 28402-1810
910-341-7886
EMAIL: jennifer.goley@wilmingtonnc.gov

COMPANY NAME: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

LICENSE NUMBER: _____

In order to do business with the city, you must be a vendor. A Vendor Application can be found at
<https://www.wilmingtonnc.gov/departments/finance-department/doing-business-with-the-city>.

ADVERTISEMENT FOR BIDS
CITY OF WILMINGTON, NC
INSTALLATION OF TWO (2) WASTE OIL HEATERS
CONTRACT NUMBER: **PB-IH-0820.1**

Sealed proposals addressed to Jennifer Goley, Buyer at the Purchasing Manager's office, P. O. Box 1810, 305 Chestnut Street, 5th Floor, Wilmington, NC 28402, and marked "INSTALLATION OF TWO (2) WASTE OIL HEATERS" will be received until 3:00 p.m. on September 11, 2020 at the Purchasing Division, 305 Chestnut Street, 5th Floor, Wilmington, NC and through email to Jennifer.goley@wilmingtonnc.gov.

PROJECT DESCRIPTION: The scope of work consists of the installation of two (2) Waste Oil Heaters.

All firms submitting bids for the proposed work must be registered with The Secretary of State.

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MBE/WBE/HUB/DBE OBLIGATION:

The City and its contractor agree to ensure that MBE/WBE/HUB/DBE's have the maximum opportunity to participate in the performance of contract and subcontracts financed in whole or in part with City of Wilmington funds provided under this agreement. In this regard, bidders and contractors shall take all necessary and reasonable steps in accordance with N.C.G.S. § 143-128 to ensure that MBE/WBE/HUB/DBE firms have the maximum opportunity to compete and perform under this bid, any change orders and any subsequent contract. The City of Wilmington and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and/or performance of this contract. A complete copy of the City of Wilmington's MBE/DBE policy is available for inspection at the Purchasing Manager's Office.

A complete copy of the City of Wilmington's MBE/WBE policy is available for inspection at the Purchasing Manager's Office.

Specifications and Bid Documents are available for review and/or pick up at the Office of the Purchasing Manager, 305 Chestnut Street, 5th Floor, Wilmington, NC. If you would like the bid documents emailed to you, you may request them by contacting Jennifer Goley by email, jennifer.goley@wilmingtonnc.gov, or by phone (910) 341-7886. The City of Wilmington does not discriminate on the basis of race, sex, color, age, national origin, religion or disability in its employment opportunities, programs, services, or activities. Bids for this project shall be guaranteed by all bidders for a period of 60 calendar days following the bid opening.

THE CITY OF WILMINGTON RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

Daryle L. Parker
Purchasing Manager
August 24, 2020

GENERAL SPECIFICATIONS
&
INSTRUCTIONS TO BIDDERS

Scope

It is the intent of this Invitation to obtain bids for the INSTALLATION OF TWO (2) WASTE OIL HEATERS, as outlined in the Scope of Work. You are requested to submit your bid on the enclosed Bid Sheet and return the entire package to Jennifer Goley, Buyer, City of Wilmington, Post Office Box 1810, 305 Chestnut St., Floor 5, Wilmington, North Carolina 28402-1810. Email bids shall to be sent to Jennifer.goley@wilmingtonnc.gov. Bids must be received no later than September 11, 2020 by 3:00 pm. **A MANDATORY PRE-BID MEETING WILL BE HELD ON WEDNESDAY, SEPTEMBER 2, 2020 FROM 9:30 A.M. TO 10:30 A.M. MEETING WILL BEGIN AT FLEET SERVICES, 205 OPERATIONS CENTER DRIVE, WILMINGTON, NC 28412.**

Marking of Envelopes/Email

Bids must be contained in a sealed envelope, plainly marked, showing the name, Invitation to Bid number, date, time (if time is specified) and the bidder's name. Emailed submissions must include the Bid Name and Contract Number in the Subject Line. Any company submitting a "No Bid" in response to an Invitation to Bid should clearly mark the outside of the envelope.

Late Bids Will Not Be Considered

Bids received after the due date and time will not be considered.

Compliance with Specifications

Your bid must be in strict compliance with the specifications and offer the same services as requested in the Invitation to Bid.

Price Corrections

All prices and notations shall be written in ink or typed. Changes or corrections made on the bid form must be made by striking through instead of using a liquid cover product and initialed by the individual signing the bid page. No corrections will be permitted once bids have been opened.

Withdrawal of Bids

Bids may be withdrawn at any time prior to the due date and time specified upon written or personal request of the bidder. No quote may be withdrawn for a period of thirty (30) days after the scheduled opening time (if the time is specified) and date. Negligence on the part of the bidder shall not constitute a right to withdraw the quote after the bids have been opened.

Rejection of Bids

The City reserves the right to reject any and all bids.

Award

Award shall be made to the lowest responsible bidder taking into consideration quality, performance and time specified in the bid for the performance of the contract. Firms must be registered with the North Carolina Secretary of State or hold a Certificate of Authority to do business in the State of North Carolina.

If the business operates under an assumed name, what is the assumed name? Has a certificate of assumed name been filed in the New Hanover County Registry? _____

If so, please provide the recording information. Deed Book _____ at Page _____.

The City of Wilmington shall not be responsible for any oral instructions made by its employees or officers of the City in regards to the bidding instructions, drawings, specifications or contract documents.

Responsibility of Compliance with Legal Requirements

The bidder's products, service and facilities shall be in full compliance with any and all applicable state, federal, local, environmental and safety laws, regulations, ordinances and standards or any standards adopted by nationally recognized testing facilities regardless of whether or not they are referred to in this invitation.

Taxes

The City of Wilmington is exempt from and will not pay federal taxes. An exemption certificate will be furnished upon request. North Carolina and local sales tax shall be shown as a separate item. Sales tax will not be a consideration in the award.

Terms and Conditions

Payment will be made by the City of Wilmington within 30 days after receipt of an approved invoice. **Terms and Conditions attached to the bid by the bidder may render the bid non-responsive and may be rejected by the City of Wilmington.**

Terms and Conditions included herein are an integral part of the contract document and shall prevail unless changes or attachments are agreed to in writing by the City of Wilmington prior to the due date and time of the opening of the Bids.

Validity of Bids

Bids shall remain open and valid for a period of one hundred eighty (180) days from the due date specified in the Invitation to Bid.

STATE OF NORTH CAROLINA

CONTRACT NO: PB-IH-0820.1

COUNTY OF NEW HANOVER

CONTRACT FOR MATERIALS AND INSTALLATION SERVICES

THIS CONTRACT, made and entered into this the ____ day of _____, 20____, by and between the CITY OF WILMINGTON, NORTH CAROLINA, a municipal corporation organized under the laws of the State of North Carolina (hereinafter called "CITY"), and [Company] a corporation organized under the laws of the State of North Carolina, having its principal place of office in _____, _____ (hereinafter called "CONTRACTOR").

W I T N E S S E T H:

1. Purpose of Contract

(a) The CITY hereby agrees to purchase the waste oil heater materials and services listed below from the CONTRACTOR and CONTRACTOR agrees to provide all equipment, tools, materials and/or supplies required to provide Services hereunder to CITY, as ordered in accordance with the provisions of this contract.

(b) Contract Documents. This Contract for INSTALLATION OF TWO (2) WASTE OIL HEATERS consists of the following contract documents, all of which are by this reference incorporated herein and made a part of this contract. The parties agree that only the terms and conditions outlined in this Agreement, not those described or referenced by any of the following contract documents, shall apply unless explicitly stated otherwise in the body of this Agreement:

(i) [Company] Proposal dated _____.

(ii) [Company] Warranty if applicable.

(c) During the period of this contract, the CONTRACTOR and the CITY may negotiate and agree in writing to provide additional equipment and or services not herein described, but that are commonly provided by high quality professional vendors, and which may enhance the process and improve results.

2. Quantities and Prices

CONTRACTOR will provide the equipment and services required by this contract at the following price:

IN WORDS _____, (\$_____)

3. Contractor Submissions and Payment

(a) The CONTRACTOR shall submit invoices corresponding to the City with sufficient details to enable a review and assure compliance with the terms and conditions of this contract.

(b) Payments shall be made by the CITY within 30 days after receipt of an approved invoice.

4. Term of Contract

(a) The CONTRACTOR shall commence the work to be performed under this contract within ten (10) days of receipt of a written order from the Purchasing Manager, and shall complete all work hereunder no later than October 31, 2020. The CONTRACTOR further agrees to pay, as liquidated damages, the sum of \$.00 for each consecutive calendar day thereafter.

5. City Obligations

(a) CITY officials may conduct inspections during the installation process and of completed work to assure compliance with contract specifications.

(b) CITY CONTACTS: the individuals listed below have been designated as the Officials responsible for communicating with the CONTRACTOR for the purpose of contract administration, including but not limited to: conducting inspections during installation, arranging for a mutually agreeable work schedule, ordering any special goods or services, reviewing and approving invoices, reporting and resolving problems, etc. During the period of performance, these officials and/or their designees will make themselves available to the CONTRACTOR via business/cell phones and email.

Sterling B. Cheatham, City Manager
City of Wilmington
P.O. Box 1810
Wilmington, NC 28402-1810

Cc: Aaron Cramer, Facilities Project Coordinator
245 Operations Center Drive
Wilmington, NC 28406
Phone: (910) 341-0185
Email: aaron.cramer@wilmingtonnc.gov

6. Release and Indemnity

To the fullest extent permitted by law, CONTRACTOR shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, directly or indirectly, the performance or nonperformance by CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of

any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit CONTRACTOR's responsibility to release, indemnify, keep and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. § 22B-1.

7. Personnel

It is mutually agreed that the CONTRACTOR is an independent contractor and not an agent of the CITY, and as such the CONTRACTOR shall not be entitled to any CITY employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

8. Conflict of Interest

No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this contract.

9. Non-Waiver of Rights

It is agreed that the CITY'S failure to insist upon the strict performance of any provision of this contract, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this contract.

10. Suspension or Termination of Contract

(a) In the event that review of the CONTRACTOR'S performance shows non-conformance to the work required by this contract, the Scope of Services or other terms or conditions contained herein as a result of the CONTRACTOR'S errors, omissions or negligent acts, the CONTRACTOR shall be in breach of this contract and the CITY may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

(b) The CITY shall also have the right to suspend this contract upon written notice to the CONTRACTOR. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the CONTRACTOR shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the CITY. If, in the opinion of the CITY, the CONTRACTOR remains in violation of this contract at the completion of the ten (10) day suspension period, the CITY shall have the right to terminate this contract whereupon all obligations of the CITY to the CONTRACTOR shall cease.

(c) In the event this project is terminated prior to completion of the services by the CONTRACTOR, the CONTRACTOR shall be paid for services performed to the date of termination. (CONTRACTOR shall be paid for all reimbursable expenses, without markup, which are due him.)

(d) The CITY and the CONTRACTOR shall have the right to terminate this contract without cause upon 30 days' notice to the other party.

(e) Nothing contained herein shall prevent the CITY from pursuing any other remedy, which it may have against CONTRACTOR including claims for damages.

11. Assignment of Agreement

It is mutually agreed by the parties hereto that this contract is not transferable by either party without the written consent of the other party to this contract.

12. Insurance Requirements

Before commencing any work, the CONTRACTOR shall procure insurance in the CONTRACTOR'S name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by the CONTRACTOR, his agents, representatives, employees, or subcontractors, whether such operations by himself/herself or anyone directly or indirectly employed by him/her.

(a) COMMERCIAL GENERAL LIABILITY

(1) CONTRACTOR shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

(2) CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

(3) The City of Wilmington, its officers, officials, agents, and employees are to be covered as additional insureds during and until completion of the work, under the CGL by endorsement CG 20 10 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONTRACTOR; premises owned, leased or used by the CONTRACTOR; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of Wilmington, its officers, officials, agents, and employees. Additional insured status for both ongoing and completed operations, in favor of City of Wilmington, its officers, officials, agents and employees, will be carried by Subcontractor performing installation.

(4) There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.

(5) The CONTRACTOR'S Commercial General Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR'S insurance.

(6) The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.

(b) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

(1) CONTRACTOR shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.

(2) The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit.

(3) The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.

(c) BUSINESS AUTO LIABILITY

(1) CONTRACTOR shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.

(2) Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

(3) Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.

(4) Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.

(5) CONTRACTOR waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.

(6) The CONTRACTOR'S Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by The City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR'S insurance.

(d) DEDUCTIBLES AND SELF-INSURED RETENTIONS.

The contractor shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not The City of Wilmington is an insured under the policy.

(e) MISCELLANEOUS INSURANCE PROVISIONS.

The policies are to contain, or be endorsed to contain, the following provisions:

(1) Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to The City of Wilmington, PO Box 1810, Wilmington, NC 28402-1810.

(2) If CONTRACTOR'S liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(f) ACCEPTABILITY OF INSURERS.

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by The City of Wilmington.

(g) EVIDENCE OF INSURANCE

(1) The CONTRACTOR shall furnish The City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.

(2) Evidence of additional insured status shall be noted on the certificate of insurance.

(3) With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to The City of Wilmington with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

(h) SUBCONTRACTORS

CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONTRACTORS' coverage, and the CONTRACTOR shall be responsible for assuring that all subcontractors are properly insured. Additional insured status for both ongoing and completed operations, in favor of City of Wilmington, its officer, officials, agents and employees, will be carried by Subcontractor performing installation.

(i) CONDITIONS

(1) The insurance required for this contract must be on forms acceptable to The City of Wilmington.

(2) The CONTRACTOR shall provide that the insurance contributing to satisfaction of insurance requirements in shall not be canceled, terminated or modified by the CONTRACTOR without prior written approval of The City of Wilmington.

(3) The CONTRACTOR shall promptly notify the Safety & Risk Manager at (910) 341-5864 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.

(4) Failure of The City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of The City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONTRACTOR'S obligation to maintain such insurance.

(5) By requiring insurance herein, The City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the CONTRACTOR and such coverage and limits shall not be deemed as a limitation of CONTRACTOR'S liability under the indemnities granted to The City of Wilmington in this contract.

(6) The City of Wilmington shall have the right, but not the obligation of prohibiting CONTRACTOR or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by The City of Wilmington.

13. Findings Confidential

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONTRACTOR under this contract are the property of the CITY. The CONTRACTOR agrees that any such documents shall not be made available to any individual or organization other than appropriate CITY officials without prior written approval of the CITY. Nothing contained in this paragraph shall be construed to prevent the CONTRACTOR from making information, reports and documents available to those individuals or firms directly concerned with the project involved with prior written agreement of the CITY.

14. Subcontracts

The CONTRACTOR shall utilize no subcontracts for carrying out the services to be performed under this contract without the written approval of the CITY.

15. Entire Agreement

This agreement constitutes the entire understanding of the parties.

16. Binding Effect

This contract shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

17. Continuing Obligation

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.

18. Reference

Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the contract.

19. Interpretation/Governing Law

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

20. Minority Business Enterprise (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

- (a) Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions, the procurement of goods, services in connection with construction projects for minority owned business enterprises.
- (b) Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
- (c) Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
- (d) Provide technical assistance as needed.
- (e) Promulgate and enforce contractual requirements that the general CONTRACTOR or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.
- (f) The CONTRACTOR shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONTRACTOR shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONTRACTOR to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty-one (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the

Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty-one (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONTRACTOR shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONTRACTOR agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is in compliance.

Rev.2019.1.24

21. Immunity Not Waived

This contract is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the CITY'S actual cost and neither party intends to waive its sovereign immunity by reason of this contract.

22. Saving Clause

If any section, subsection, paragraph, sentence, clause, phrase or portion of this contract is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

23. Other Laws and Regulations

CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONTRACTOR will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. § 681.1 and in accordance with N.C.G.S. § 132-1.10 and § 75-65.

24. Amendments

This contract shall not be modified or otherwise amended except in writing signed by the parties.

25. Non-Discrimination

CONTRACTOR will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this contract because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONTRACTOR will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this contract and may result, at CITY'S option, in a termination or suspension of this contract in whole or in part.

26. Non-Appropriations Clause

In the event no CITY funds or insufficient CITY funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the CITY will immediately notify CONTRACTOR of such occurrence and this Agreement shall create no further obligation of the CITY as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the CITY of any kind whatsoever.

27. Counterparts

This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

28. No Publicity

No advertising, sales promotion or other materials of the CONTRACTOR or its agents or representations may identify or reference this Contract or the CITY in any manner absent the written consent of the CITY. Notwithstanding the forgoing, the parties agree that the CONTRACTOR may list the CITY as a reference in responses to requests for proposals, and may identify the CITY as a customer in presentations to potential customers.

29. CITY Not Liable For Special or Consequential Damages

The CITY shall not be liable to the CONTRACTOR, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the CITY, or any other consequential, indirect or special damages or lost profits related to this Contract.

30. Public Records

CONTRACTOR acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C.G.S. § 132) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

If CONTRACTOR believes documents related to the Agreement contain trade secrets or other proprietary data, CONTRACTOR must notify the CITY and include with the notification a statement that

explains and supports CONTRACTOR'S claim. CONTRACTOR also must specifically identify the trade secrets or other proprietary data that CONTRACTOR believes should remain confidential.

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

31. Authority to Act/IDA Certification

Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant and represent that the CONTRACTOR is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the CONTRACTOR has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONTRACTOR were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147, CONTRACTOR shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

32. No Presumption.

None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the CITY has caused this contract to be duly executed in its name and behalf and the CONTRACTOR has caused this contract to be duly executed in its name and behalf.

CITY OF WILMINGTON, NORTH CAROLINA

By: _____
Sterling B. Cheatham, City Manager

Date: _____

WITNESS:

Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

Melissa I. Huffman, Assistant City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This ____ day of _____, 2020.

Jennifer R. Maready, Finance Director

Project Account _____

Org. _____ Obj. _____ Project _____

Amount \$_____

Requisition/PO# _____

Federal ID # 56-6000239

[Company]

By: _____
President/Vice President

WITNESS:

Secretary, Assist. Secretary, Trust Officer

(CORPORATE SEAL)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that the corporation's
Secretary, Assist. Secretary or Trust Officer, Mr./Mrs./Ms. _____
personally came before me this day and acknowledged that he (she) is the _____
of [Company], a Corporation, and that by authority duly given and as the act of the corporation,
the foregoing instrument was signed in its name by its President, Vice President, or Assist. Vice
President, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and
attested by himself (herself) as its Secretary, Assist. Secretary or Trust Officer.

WITNESS my hand and official seal this the _____ day of _____, 2020.

Notary Public

My Commission Expires: _____

[SEAL]

INSURANCE CERTIFICATES

(Staple Insurance Certificates here, as required in Section 12. of the Contract.)

BID SHEET

BID NAME:

INSTALLATION OF TWO (2) WASTE OIL HEATERS

CONTRACT No.: PB-IH-0820.1

The undersigned hereby certifies that this Bid is made without prior understanding, agreement or connection with any person(s), firm(s) or corporation(s) making quotes or Bids. The bidder further certifies that (s)he is not suspended or debarred from bidding by any federal, state, or local agency and that, if awarded this contract, (s)he will abide by all specifications, provisions and conditions contained in the Invitation to Bid.

PROJECT DESCRIPTION: INSTALLATION OF TWO (2) WASTE OIL HEATERS

Location of Work:

- **Fleet Department – 205 Operations Center Drive, Wilmington, NC 28412**

The City of Wilmington is seeking services your total price for the furnishing of materials, equipment and labor to: **Install two (2) waste oil furnaces at Fleet Services – 205 Operations Center Drive, Wilmington NC 28412**

- 1.1 Contractor agrees to commit sufficient resources to perform all services and additional services required under this Agreement within the mutually agreed upon time schedules.
- 1.2 Services to be performed by Contractor are as described below.
- 1.3 Contractor must provide three references for similar work.
- 1.4 Work must be completed by October 31, 2020.

Workforce Requirements:

- 2.1 The Contractor will provide a full-time experienced Project Manager on site. The Contractor's Project Manager and other designated representatives will work closely and collaboratively with the City's Representative for the duration of the project.
- 2.2 Contractor's workforce will be identifiable by uniform, name tags, badges or other safeguards for security purposes required by the City.
- 2.3 Contractor may not sub-contract any part of the project without prior approval of the City's Representative.
- 2.4 Contractor acknowledges that the City of Wilmington is a tobacco free workplace and as such, the Contractor's workforce must adhere to this regulation and refrain from all tobacco use while on City property.

Safety Standards:

- 3.1 Contractor agrees and warrants that it and its workforce shall comply with

applicable OSHA and EPA regulations. Further, all equipment used shall meet all requirements identified by the State of North Carolina and City of Wilmington.

- 3.2 Contractor agrees that compliance with the standards and rules and regulations identified above shall be at the Contractor's cost. Proof of compliance with the above shall be submitted at the City's request.

General Details:

4.1 This project will consist of two units:

a. HEAVY EQUIPMENT GARAGE:

- i. The Contractor will conduct a thorough inspection to and properly size the proper furnace for the space and conditions.
- ii. The Contractor will then submit provide and install:
 - CleanBurn Model CB 5000, 500,000 btu used oil heater, or approved equivalent, on the mezzanine
 - Install class A chimney stack through roof using existing hole (if available and accessible). Seal and waterproof the penetration following manufacturer recommendations.
 - Mount pump on the wall near existing waste oil tank
 - Provide and install thermostat on the wall
 - Provide startup and staff training on unit operation and maintenance.

b. SMALL VEHICLE GARAGE:

- i. The Contractor will conduct a thorough inspection to and properly size the proper furnace for the space and conditions.
- ii. The Contractor will then submit provide and install:
 - CleanBurn Model CB 3250, 325,000 btu used oil heater, or approved equivalent, on the mezzanine
 - Install class A chimney stack through roof using existing hole (if available and accessible). Seal and waterproof the penetration following manufacturer recommendations.
 - Mount pump on the wall near existing waste oil tank
 - Provide and install thermostat on the wall
 - Provide startup and staff training on unit operation and Contractor's General Requirements:

- The Contractor will provide all necessary labor and materials to carry out its

responsibilities within the time frames set by the City of each move. This shall include any cost associated with the use of an aerial work platform to perform the work.

- The Contractor will be responsible for safeguarding and protecting its own work, material, tools and equipment.
- The Contractor will furnish a dumpster if required. The Contractor shall, at all times, keep the premises free from excessive accumulation of waste material or rubbish caused by its employees or work.
- Contractor's Project Manager is responsible for all aspects of project management.
- The Contractor may have to schedule work in cooperation with work activity while working on-site at City facilities.
- Contractor shall arrive at the site promptly with all necessary equipment to complete the job.
- Work may be scheduled during standard hours (Monday-Friday, 7:00 AM – 4:00 PM) or nights and weekends, but must be approved in advance by the City's Project Manager.
- All necessary permits are to be provided by the Contractor and cost included in the bid prices.
- Contractor shall document all completed repairs and warranty the work for a minimum of 5 years.

The City of Wilmington's Responsibility:

- City Representative will provide architectural plans.
- City Representative will arrange for parking of contractor vehicles adjacent to the work site.
- City will provide all water and electric utilities needed in the completion of the work.

Penalties:

- If, during the term of this Agreement, the Contractor fails to provide property protection that is reasonable and necessary as determined by the City, and damage ensues, the Contractor shall immediately repair the damage in an acceptable manner to the City, or the City shall have the option, but not the obligation, to repair and charge the Contractor for all costs of the repair
- If, during the term of this Agreement, the Contractor fails to maintain the premises in a neat and rubbish free condition, as mandated by fire and personal safety standards and acceptable to the City, the City may clean the area and charge the Contractor for the cost of the work.

PROPOSAL PAGE

In accordance with the terms, conditions and specifications, I/we, as authorized signatory to commit the firm, do hereby accept in total all the terms and conditions stipulated and referenced in this ITB document and hereby submit the following prices for

Installation of Two (2) Waste Oil Heaters

	<u>Item Description:</u>	<u>Equipment/ Materials</u>	<u>Labor</u>	<u>Price</u>
1.	HEAVY EQUIPMENT GARAGE CLEANBURN or approved equivalent, as follows: Manufacturer: _____ _____ _____ with Model Number: _____ _____	\$	\$	\$
2.	SMALL VEHICLE GARAGE CLEANBURN or approved equivalent, as follows Manufacturer: _____ _____ _____ with Model Number: _____ _____	\$	\$	\$
3.	Submittals:	<u>Please attach material and machine specifications.</u>		
TOTAL COST:		\$ =====		

WORDS:

_____ (\$_____)

Warranty Information: _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

Telephone Number: _____ **Fax Number:** _____

E-mail: _____

Signature: _____

Date: _____

Name (Print): _____

Title: _____