

**ADDENDUM NUMBER TWO**

**Date:** August 24, 2022  
**From:** McAdams  
**Re:** Lincoln County Gateway Signs  
Highway 321 & Highway 16  
Lincoln County, NC  
LLC-21001

**NOTICE TO BIDDERS:**

Bidder is hereby notified that this Addendum shall become a part of the Contract Documents and shall be attached to the Project Manual for the Project.

The following items are intended to revise and clarify the Drawings and the Project Manual.

The bidder shall ensure that their Sub-Bidders are in full receipt of the information contained herein.

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**ADDENDA ITEMS:****QUESTIONS**

The following questions were received after the mandatory pre-bid meeting for the project. These answers are direct guidance to the bidders and will be reflected in the conformed set of contract documents upon which the project contract will be based. The changes made to the Project Manual and the Drawings are all derived from these responses to these questions.

1. Is there a Lincoln County sample contract for review of terms and conditions (i.e., insurance requirements, bond forms, liquidated damages, etc.)?

**McAdams Response: Lincoln County does not have a sample contract to review at this time.**

2. Please provide the Bid Supplements documents: 1) Non-Collusion Statement, 2) Disadvantaged Business Enterprise (With Affidavits A-E), 3) E-Verify Affidavit, 4) Sales Tax Report, 5) Lincoln County Terms and Conditions.

**McAdams Response: See attached.**

3. Please confirm the County has already obtained any and all NCDOT permits/Encroachment Agreements for these gateway signs?

**McAdams Response: The NCDOT encroachment permits have been obtained.**

4. Are any County permits required for the sign installation?

**McAdams Response: Yes, County permits are required. The permit applications for each sign have been submitted and are awaiting County approval.**

5. If any permits are required, permit processing times are out of Sign Contractor's control and may impact construction/completion schedule. Will this be taken into consideration with regards to construction/completion schedule?

**McAdams Response: See response to questions #3 & #4 above.**

6. Are any existing sign removals to be included in the Sign Contractor's scope of work?

**McAdams Response: Sign 2 includes demolition of the foundation for an existing sign which will be included in the Sign Contractor's scope of work. See demolition plan for Sign 2 (Sheet C1.01).**

7. If existing sign are to be removed by Sign Contractor, will the entire footing need to be removed or can the sign be cut down to grade?

**McAdams Response: The entire footing will need to be removed – see demolition plan for Sign 2 (Sheet C1.01).**

8. Are the solar panel modules mounting to the sign as indicated on Sheet D1.00 or separately as indicated on Sheets E1.00 and E2.00?

**McAdams Response: The solar panels will be separate from the signs as shown on the Electrical plans (not as depicted on Sign detail sheets D1.00 - D4.00). Solar panels should be hidden from view from the road as much as possible while still allowing for adequate sunlight for operation.**

9. Will working hours be restricted at any time?

**McAdams Response: The County does not have restrictive working hours.**

10. Will footing hole inspections be required?

**McAdams Response: Footings will be inspected by County inspectors.**

11. Is any concrete testing required?

**McAdams Response: Concrete cores will be tested by a third party testing agency contracted by the County.**

12. Is there a set time for the concrete to cure before setting the signs?

**McAdams Response: 7 days or 75% of the specified compressive strength (whichever is higher). Quality test to verify.**

13. Are there any special warranties/guarantees?

**McAdams Response: 1 year warranty from final acceptance. (There is a separate manufacturer's warranty on the solar panels, batteries, and lights.)**

14. Will progress billing be allowed?

**McAdams Response: Yes – this should be submitted on an AIA form for pay app. Contractor will need to submit to McAdams for signature, and McAdams will then submit to the County.**

15. Is sales tax to be included in the bid?

**McAdams Response: Sales tax should be included in base bid, not as a separate line item. Each month the Contractor should break out sales tax on pay app.**

16. Can you provide a contact at the building department we can touch base with on the permit costs?

**McAdams Response: All county permitting costs are waived.**

No further addenda will be issued.

Sincerely,

**MCADAMS**



Nick Lowe, RLA, ASLA  
Senior Landscape Architect

**LINCOLN COUNTY BID BOND**

**(Important! AIA A-310 Bid Bond As Indicated In AIA-A701 Instructions to Bidders Is NOT Acceptable)**

Date of Execution of this Bond: \_\_\_\_\_

Name and Address of Principal (Bidder): \_\_\_\_\_

\_\_\_\_\_

Name and Address of Surety: \_\_\_\_\_

\_\_\_\_\_

Name and Address of Owner/Obligee: \_\_\_\_\_

\_\_\_\_\_

Amount of Bond: \_\_\_\_\_

\_\_\_\_\_

Bid and Proposal Date: \_\_\_\_\_ for \_\_\_\_\_

\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and the above named and SURETY above named, who is duly licensed to act as surety in the State of North Carolina, are held and firmly bound unto (Owner/Obligee) \_\_\_\_\_, a body corporate and politic of the State of North Carolina as Obligee, in the penal sum of FIVE PERCENT (5%) of the amount bid in the bid and proposal above described in lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF OBLIGATION is such, that if the Principal shall be awarded the contract for which the bid and proposal above described is submitted and shall execute the contract, give bond for the faithful performance of the contract, and give bond for the payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, within ten (10) days after the award of the same to the Principal above named, then this obligation shall be null and void; but if the Principal above named fails to so execute such contract and give performance bond and payment bond as required by Section 129 of Chapter 143 of the General Statutes of North Carolina, as amended and Article 3 of Chapter 44-A of the General Statutes of North Carolina, as amended, the Surety shall, upon demand, forthwith pay to the Obligee the amount of this bond set forth above.

IN WITNESS WHEREOF, the Principal above named and the Surety above named have executed this instrument under their several seals on the date set forth.

WITNESS:

\_\_\_\_\_  
Principal (name of individual, individual and trade name, partnership, corporation, or joint venture)

\_\_\_\_\_  
(Proprietorship or Partnership)

BY \_\_\_\_\_

Title: \_\_\_\_\_  
(Owner, Partner, Office held in corporation, joint venture)

ATTEST: (Corporation)

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

Title: \_\_\_\_\_  
(Corporate Secretary or Assistant Secretary Only)

\_\_\_\_\_  
Surety (Name of Surety Company)

WITNESS:

By \_\_\_\_\_

Title: Attorney in fact

\_\_\_\_\_

(Corporate Seal of Surety)

\_\_\_\_\_  
(Address of Attorney in Fact)

COUNTERSIGNED:

\_\_\_\_\_  
N.C. Licensed Resident

IMPORTANT- Surety Companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of North Carolina.

## **LINCOLN COUNTY GENERAL CONTRACT TERMS AND CONDITIONS**

As used herein, the terms "Service Provider," "Vendor" and "Contractor" may be used interchangeably to refer to the party contracting with Lincoln County (the "County") pursuant to that Contract, Agreement or Proposal (the "Contract") made pursuant to an RFP (as the case may be) of which these Terms and Conditions have been made a part.

1. **NON-APPROPRIATION CLAUSE:** Contractor acknowledges that the County is a governmental entity and the validity of this Agreement is contingent upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are not available and not appropriated for the performance of the County's obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the County upon thirty (30) days written notice by the County to the Contractor regarding the non-appropriation of public funds.
2. **DEFAULT AND PERFORMANCE BOND:** In case of default by the Contractor, the County may procure the articles or services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. Lincoln County reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to the County, as allowed by law.
  - a. Bankruptcy of Contractor, Service Provider or Vendor. Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, Lincoln County may immediately terminate, for cause, this Contract and all other existing contracts the Contractor has with the County, and debar the Contractor from doing future business with Lincoln County.
3. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their 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. Lincoln County reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to terminate the Contract as provided herein.
4. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds of the County for the purpose set forth in this Contract.
5. **TAXES:** Any applicable taxes shall be invoiced as a separate item. By execution of the bid document, or this Contract, the vendor has certified that it and all of its affiliates, if applicable, collect(s) the appropriate taxes as required by law.
6. **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.
7. **GOVERNING LAWS AND VENUE:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. Any dispute or litigation arising from this Contract shall be filed in state courts located in Lincoln County, North Carolina or the federal courts of the Western District of North Carolina.

- 8. NO COLLUSION OR CONFLICT OF INTEREST:** The Service Provider represents and warrants that this, or any other proposal, related to this Contract is not made in connection with any competing Service Provider submitting a separate response to a RFP, and is in all respects fair and without collusion or fraud.
- 9. INSPECTION AT CONTRACTOR'S SITE:** Lincoln County reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective Contractor prior to awarding said contract, and during the contract term, as necessary for the County's determination that such equipment/item, plant or other facilities conform with the specifications and requirements required and are adequate and suitable for the proper and effective performance of the contract.
- 10. PAYMENT TERMS:** Payments are due to the Contractor not later than thirty (30) days after receipt of a final invoice or the acceptance of goods by the County, whichever is later. Lincoln County is responsible for all payments to the Contractor under the Contract.
- 11. AFFIRMATIVE ACTION:** The Contractor shall take affirmative action in complying with all federal and state requirements concerning fair employment, employment of people with disabilities, and treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.

More specifically, Title VI is part of the Civil Rights Act of 1964, as amended, and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color or national origin under any program or activity that receives federal financial assistance. For our purposes, "national origin" equates to individuals who have a limited proficiency with the English language and their primary language is not English, hence, the term "limited English proficiency" or LEP.

- 12. 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 previously sold or used for any purpose other than that contracted for herein and shall be in first class condition. All containers and/or packaging shall be suitable for handling, storage or shipment.
- 13. 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 inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for 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 (OSHA), and state and federal requirements relating to clean air and water pollution.
- 14. PATENT:** The Contractor shall hold harmless the County, its officers, agents and employees, from liability of any kind, including costs and expenses, on account of the violation or misuse of any

copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Contract, including use by the government.

**15. ADVERTISING:** Contractor agrees not to use the existence of this Contract or the name of Lincoln County as part of any commercial advertising, unless the County provides an allowance of such, in writing.

**16. ASSIGNMENT:** The Contractor shall be prohibited from assigning its obligations under this contract, and shall be prohibited from assignment of Contractor's right to receive payment hereunder. However, upon written request and solely as a convenience to the Contractor, Lincoln County may:

- a. Forward the Contractor's payment 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.
- c. In no event shall such approval and action obligate Lincoln County to anyone other than the Contractor, and the Contractor shall remain responsible for fulfillment of all contract obligations.

**17. INSURANCE COVERAGE and GENERAL REQUIREMENTS:** During the term of this 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 this Contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:

- a. Workers' Compensation – The Contractor 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 One-Hundred and Fifty Thousand Dollars (\$150,000.00), covering all employees of Contractor engaged in any work under this 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, and shall require subcontractor to provide written proof of said coverage, for inspection by the County, if requested.
- b. Commercial General Liability - Contractor shall maintain Commercial General Liability insurance, including coverage for products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, and One Million Dollars (\$1,000,000.00) annual aggregate. The limits may be satisfied by a combination of primary and excess insurance. The coverage shall be written on an occurrence basis.
- c. Automobile Insurance Coverage - At all times while the Contractor's representatives are conducting on-site work, the Contractor shall maintain Business Auto insurance for any owned, hired, rented, or borrowed vehicle with a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance.



d. General Insurance Requirements:

- i. Prior to beginning the work, Contractor shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied. Contractor shall provide certificates of insurance to the County as evidence of the required coverage. Contractor agrees to provide complete copies of policies if requested. Either the failure of Contractor to provide timely evidence of insurance, or to place coverage with insurance companies acceptable to the County, shall be viewed as Contractor's delaying performance, which shall entitle the County to all appropriate remedies under the law including termination of the Contract.
- ii. Lincoln County shall be named as an additional insured under Contractor's automobile and general liability insurance. In the event of a loss arising out of, or relating to the Contractor's services performed under this Agreement, Contractor's Liability insurance shall be primary (pay first) with respect to any other insurance which may be available to the County, regardless of how the "other insurance" provisions may read.
- iii. The workers compensation policy as required herein must contain a waiver of subrogation in favor of the County.
- iv. Contractor shall be responsible for insuring all of his/her own personal property, improvements, and betterments.
- v. All insurance policies put forth to satisfy the above requirements shall require the insurer to provide a minimum of thirty (30) days written notice to the County of any material change in coverage, cancellation, or non-renewal.
- vi. All insurance put forth to satisfy the above requirements shall be placed with insurance companies licensed to provide insurance in the State of North Carolina. Any deductibles or self-insured retentions in the required insurance shall be subject to approval by the County.

**18. GENERAL INDEMNITY:** The Contractor shall hold and save Lincoln County, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or intentionally tortuous acts of the Contractor provided that the contractor is notified in writing within 30 days that the County has knowledge of such claims. The Contractor represents and warrants that it shall make no claim of any kind or nature against Lincoln County's agents who are involved in the delivery or processing of contractor goods to the County. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract. If this Contract is a Construction Agreement or Design Professionals Agreements as defined by N.C.G.S. §22B-1(f) then Section 19 will apply.

**19. INDEMNITY FOR CONSTRUCTION AGREEMENTS OR DESIGN PROFESSIONALS AGREEMENTS.**

The Contractor shall hold and save Lincoln County, its officers, agents, employees, independent contractors, indemnitees or any other person or entity harmless from liability of any kind, including all claims and losses accruing or resulting from the performance of this Contract, if this Contract is a Construction Agreement or Design Professionals Agreement as defined herein, so long as the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage,

or expense indemnified (N.C.G.S. §22B-1). This shall include the Contractor's duty to indemnify the County as to any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the County to defend against any third party claims alleged in any court, tribunal or alternative dispute resolution procedure required by law or contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorneys' fees litigation or arbitration expenses, or court costs to be indemnified.

For the purposes of this section, a Construction Agreement is defined as any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

For the purposes of this section, a Design Professional Agreement is any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services, which are service or work performed by a Design Professional, as defined herein.

For the purposes of this section, Design Professional is defined as a person or entity who is licensed as architects (Chapter 83A), landscape architects (Chapter 89A), engineers and land surveyors (Chapter 89C), geologists (Chapter 89E), and soil scientists (Chapter 89F).

- 20. CONTRACT AND OR AGREEMENT TERM LENGTH:** The duration of this contract and or agreement shall be for one year unless noted on the signature page. No contract and or agreement shall extend 60 days past the renew date. Contract and or agreements may be extended, upon agreement of the parties, for up to a total of five years from the original contract or agreement date. However; the contract and or agreement will not be automatically renewed past the contract and or agreement dates listed on the initial signature page.
- 21. CANCELLATION (TERM CONTRACTS ONLY):** All Contract obligations shall prevail for at least ninety (90) 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 by giving thirty (30) days prior notice in writing to the other party.
- 22. QUANTITIES (TERM CONTRACTS ONLY):** The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.
- 23. PRICE ADJUSTMENTS (TERM CONTRACTS 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: Notice must be provided to the County 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: If there are price adjustments that are considered a decrease in price, then the County shall receive full proportionate benefit immediately, at any time during the contract period.
  - c. Increases: All prices shall be firm against any increase for the initial 180 days from the effective date of the Contract. After this period, a request for increase may be submitted

with the County reserving the right to accept or reject the increase, or terminate the contract. Such action by Lincoln County shall occur not later than 15 days after the receipt by Lincoln County of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.

- d. Invoices: 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.

**24. CRIMINAL CONVICTIONS CHECKS:** Lincoln County is committed to providing a crime free environment for its staff and citizens. If the contractual requirements require that your personnel will have access to various areas of County Facilities, the County reserves the right to require a criminal convictions check on owners, officers, employees and any other workers of the Contractor and their subcontractors at any time upon written request. The Contractor or the Contractor's direct representative shall accompany all new employees to the jobsite and present them to the Contract Administrator, if not defined in the contract, **is the individual entitled to make all final decisions regarding the contract for the County**. At that time, if a criminal convictions check has been requested then the Contractor shall provide a criminal history (not a letter) including traffic records, by presenting a document from a reputable company providing statewide searches covering a minimum of the last seven (7) years to the Contract Administrator. The criminal history shall match the name on state issued picture identification card of the individual being search. Out of state searches shall be required for persons living in the state of North Carolina for less than seven (7) years. The names, addresses and birth dates of each person that enters County property (including the owners and subcontractors) in the performance of this contract shall be supplied to the County, with the criminal history, on company letterhead and signed by a representative duly authorized to sign on behalf of the company. This history shall be provided to the Contract Administrator at least twenty-four (24) hours prior to any person performing work under this contract. Persons that have not supplied this criminal history may be turned away and not allowed to work on any property owned or utilized by the County until proper documentation is submitted and approved by the Contract Administrator.

The County reserves the right to keep any person from being assigned to work on its property if that person (1) has been convicted of a criminal offense since the age of eighteen (18), or (2) been found at any time to have an outstanding warrant or a pending court case, or, (3) if related to his/her work at the County, has current habitual problems with traffic related issues such as no driver's license, no vehicle tags, and/or no insurance. The Contractor must disclose the criminal convictions records of all persons proposed to work on property with the designated county official.

During the term of this contract, the Contractor shall comply with these procedures for any new owner, officer, employee and any other worker of the Contractor and their subcontractors upon proper written notification by the Contract Administrator.

The Contract Administrator shall maintain all criminal convictions checks in a secure locked container for the term of the contract. At the end of the contract period the Contract Administrator shall ensure that the files have been returned to Contractor or destroyed in such a manner as to prevent disclosure of any kind.

**25. EMPLOYEE VERIFICATION:** Contractor shall verify and provide photo identification of each of its employees, and require the same of any subcontractors hired by Contractor. Contractor shall further utilize employees or subcontractors that speak fluent English such that they can understand any directions of the Contractor or County, and be understood in their responses thereto. Contractor, at all times that it is subject to this Contract, or any other contract with Lincoln County shall comply, to the extent applicable, with Article 2 of Chapter 64 of the North Carolina General Statutes, and shall further ensure that any subcontractors performing work for Company shall at all times comply with Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall further execute an affidavit on a form provided by Lincoln County averring such compliance as stated herein.

**26. IRAN DIVESTMENT ACT:** For new procurements and new, renewed, or assigned contracts with Lincoln County on or after February 26, 2016, each bidder or vendor must affirm that it is not listed on the State Treasurer's Final Divestment List found at <https://www.nctreasurer.com/office-state-treasurer/divestment-and-do-not-contract-rules> as of the date of signature. The certification shall be due at the time a bid is submitted or the time a contract is entered into, renewed, or assigned (see N.C.G.S. §147-86.55-69).

Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Lincoln County (see N.C.G.S. § 147-86.60(a)). Any existing contracts with these Iran-linked persons will be allowed to expire in accordance with the contract's terms (see N.C.G.S. § 147-86.60(c)). Contracts valued at less than \$1,000.00 are exempt from this restriction (see N.C.G.S. § 147-86.61(a)). In addition, Lincoln County may contract with, but is not required to, a listed individual or company if it makes a good-faith determination that (1) the commodities or services are necessary to perform its functions and (2) that, absent such an exemption, it would be unable to obtain those commodities or services. (see N.C.G.S. § 147-86.61(c)). Any such exemption shall be entered by Lincoln County into the procurement record. The Act provides that vendors to Local Government Units may not utilize any subcontractor found on the State Treasurer's Final Divestment List. (G.S. 147-86.55-69).) It shall be each vendor's responsibility to monitor its compliance with this restriction.

**27. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL:** For new procurements and new, renewed, or assigned contracts with Lincoln County on or after October 1, 2017, each bidder or vendor must affirm that it is not listed on the State Treasurer's Final Divestment List or Do-Not-Contract List found at <https://www.nctreasurer.com/office-state-treasurer/divestment-and-do-not-contract-rules> (a "restricted company") as of the date of signature. The certification shall be due at the time a bid is submitted or the time a contract is entered into, renewed, or assigned. (G.S. 147-86.80-84).

Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Lincoln County (see N.C.G.S. § 147-86.82(a)). Any contract entered into with a company that is identified as a restricted company at the time of contract is void ab initio (see N.C.G.S. § 147-86.82(b)). Upon receipt of information that the Contractor that was not initially identified as a restricted company at the time of the Contract execution has been identified as a restricted company, the County shall review the information and offer the Contractor an opportunity to respond. If the Contractor fails to demonstrate that the Contractor should not have been identified as a restricted company within ninety (90) days after notification by the County, then

the County shall take action as may be appropriate and provided for by law, rule or contract (see N.C.G.S. § 147-86.82(c)). Contracts for less than one-thousand dollars (\$1,000.00) are exempt from this restriction (see N.C.G.S. §147-86.83).



**LINCOLN COUNTY**  
**MWBE**  
**RECRUITMENT, SELECTION**  
**and**  
**DISPUTE RESOLUTION**  
**PROCEDURES**

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# **OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN LINCOLN COUNTY GOVERNMENT BUILDING CONSTRUCTION OR REPAIR CONTRACTS**

## **D) General**

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on LINCOLN COUNTY building construction or repair projects in the amount of \$300,000 or more. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

LINCOLN COUNTY has a current verifiable goal of 10 percent for minority participation for building construction or repair projects. The goal will be reviewed every 5 years.

## **A) INTENT**

It is the intent of these guidelines that LINCOLN COUNTY GOVERNMENT, as awarding authority for building construction or repair projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the goal of 10 percent for participation by minority businesses in each building construction or repair project as required by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

## **B) DEFINITIONS**

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

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

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

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



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

4. Owner – LINCOLN COUNTY GOVERNMENT.

5. Designer – Any person, firm, partnership, or corporation which has contracted with Lincoln County Government to perform architectural or engineering work.

6. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

7. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.

8. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with Lincoln County Government to perform building construction or repair work.

9. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

## **II) MINORITY OUTREACH PLAN AND GUIDELINES**

### **A) Owner Responsibilities**

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

1. Work with minority-focused and small business groups that support MBE inclusion in the solicitation of bids. These groups include CVCC Small Business Development Center and the Small Business Technology Center.
2. Place emphasis on the importance of soliciting certified MBE firms for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MBE firms.
3. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
4. Assess the effectiveness of the MBE program, and identify opportunities to enhance it by evaluating MBE participation and compliance and reviewing the good faith efforts provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified MBE firms that have expressed an interest in Lincoln County Government projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors who plan to participate in the project.

6. Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their MBE outreach programs are working and to share “best practices” and ideas to improve programs.
7. Participate in educational opportunities throughout the community as they become available and offer training sessions to share Lincoln County Government’s outreach plan with interested businesses and organizations
8. Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors, and small businesses, and provide information to the general public about the MBE program, and continue outreach efforts to the business community.
9. Enhance Lincoln County Government’s web page by including the outreach plan and guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Maintain or continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with Lincoln County Government have access to up-to-date information.
12. Advertise upcoming bid opportunities in minority-focused media.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

**B) Designer Responsibilities**

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders’ proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.
5. During construction phase of the project, review documentation for contract payment to MBEs (e.g. state form “Appendix E: MBE Documentation for Contract Payment”  
<http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf>) for

compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.

### **C) Contractor Responsibilities**

Under the single-prime bidding, the separate-prime bidding, construction manager at risk, and alternative contracting methods, contractor(s) will:

1. Attend the scheduled pre-bid conference.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. During the bidding process, comply with the owner's requirements listed in the proposal for minority participation.
4. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).
5. Make documentation showing evidence of implementation of Prime Contractor, CM-at-Risk and First-Tier Subcontractor responsibilities available for review by Lincoln County Government, upon request.
6. Upon being named the apparent low bidder, the bidder shall provide one of the following: (1) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
7. The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
8. The contractor(s) shall submit with each monthly pay request(s) and final payment(s) documentation for contract payment to MBEs (e.g. state form "Appendix E: MBE Documentation for Contract Payment" <http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf>) for designer's review.
9. During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
10. If during the construction of a project additional subcontracting opportunities become available, the contractor shall make a good faith effort to solicit sub-bids from minority businesses.

### **III) Minority Business Responsibilities**

#### **A) Certification**

While minority businesses are not required to become certified in order to participate in Lincoln County Government building construction or repair projects, it is recommended that they become certified and take advantage of appropriate technical assistance that is made available. Certification can be obtained from the following agencies:

North Carolina Department of Administration Historically Underutilized Business (HUB) certification

North Carolina Department of Transportation Minority/Disadvantaged/Women-owned Business certification

Small Business Administration 8(a) certification

Other governmental agencies on a case-by-case basis

#### **B) Other Responsibilities**

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

### **IV) MINIMUM COMPLIANCE REQUIREMENTS**

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

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

1. Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (10 points)
2. Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. (10 points)
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 points)
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 points)

5. Attending any pre-bid meetings scheduled by the public owner. (10 points)
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 points)
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (15 points)
8. Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (25 points)
9. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. (20 points)
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands. (20 points)

**V) DISPUTE RESOLUTION PROCEDURES**

Pursuant to G.S. 143-128 (f1), all disputes involving contractors on a building construction or repair project with Lincoln County Government shall be resolved pursuant to LINCOLN COUNTY GOVERNMENT'S DISPUTE RESOLUTION POLICY

In addition to these guidelines, there will be issued with each construction bid package provisions for providing minority business participation in LINCOLN COUNTY GOVERNMENT projects.

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State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of \_\_\_\_\_ (Name of Bidder)

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

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.

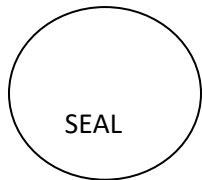
(1 NC Administrative Code 30 I.0101)

- 1 - (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote...
2 --(10 pts) Made the construction plans, specifications and requirements available for review...
3 - (15 pts) Broken down or combined elements of work into economically feasible units...
4 - (10 pts) Worked with minority trade, community, or contractor organizations...
5 - (10 pts) Attended prebid meetings scheduled by the public owner.
6 - (20 pts) Provided assistance in getting required bonding or insurance...
7 - (15 pts) Negotiated in good faith with interested minority businesses...
8 - (25 pts) Provided assistance to an otherwise qualified minority business...
9 - (20 pts) Negotiated joint venture and partnership arrangements...
10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors...

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner.

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

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



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

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

State of \_\_\_\_\_, County of \_\_\_\_\_

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

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

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

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**State of North Carolina -- AFFIDAVIT B --**

**Intent to Perform Contract with Own Workforce.**

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

Affidavit of \_\_\_\_\_  
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_  
\_\_\_\_\_ contract.  
(Name of Project)

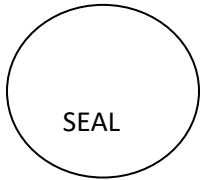
In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

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

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

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

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



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

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

State of \_\_\_\_\_, County of \_\_\_\_\_

**Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_**

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

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

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**State of North Carolina - AFFIDAVIT C –  
Portion of the Work to be Performed by Minority Firms**

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

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by minority businesses as defined in GS143-128.2(g) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of \_\_\_\_\_ I do hereby certify that on the  
(Name of Bidder)

Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_  
(Project Name)

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.  
Attach additional sheets if required

Name and Phone Number	*Minority	Work description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

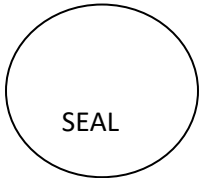
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

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

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

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



State of \_\_\_\_\_, County of \_\_\_\_\_

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

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

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

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**State of North Carolina -- AFFIDAVIT D**

**Good Faith Efforts**

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

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of \_\_\_\_\_ I do hereby certify that on the  
 (Name of Bidder)

Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_  
 (Project Name)

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority	Work description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**),

Female (**F**) Socially and Economically Disadvantaged (**D**)

**Examples** of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A) Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B) Copies of quotes or responses received from each firm responding to the solicitation.
- C) A telephone log of follow-up calls to each firm sent a solicitation.
- D) For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E) Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F) Copy of pre-bid roster.
- G) Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H) Letter detailing reasons for rejection of minority business due to lack of qualification.
- I) Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

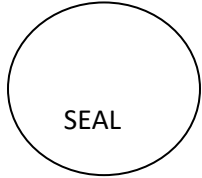
The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

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

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

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

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



State of \_\_\_\_\_, County of \_\_\_\_\_

**Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_**

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

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

## Identification of Minority Business Participation

I, \_\_\_\_\_  
 (Name of Bidder)

do hereby certify that on this project, we will use the following minority business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	Minority Category

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

The total value of minority business contracting will be (\$) \_\_\_\_\_.

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**MBE DOCUMENTATION FOR CONTRACT PAYMENTS**

Prime Contractor/Architect: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_

Pay Application #: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments made to Minority Business Enterprises on this project for the abovementioned period.

MBE Firm Name	*Indicate Type of MBE	Amount Paid This Month	Total Payments To Date	Total Amount Committed

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F), Social and Economically Disadvantage (D)

Date: \_\_\_\_\_ Approved/Certified By: \_\_\_\_\_

*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Signature*

**SUBMIT WITH EACH PAY REQUEST & FINAL PAYMENT**

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**RULES IMPLEMENTING MEDIATED  
SETTLEMENT CONFERENCES IN  
LINCOLN COUNTY CONSTRUCTION PROJECTS**

**Table of Rules**

- I) Initiating Mediated Settlement Conferences
  - A) Purpose of Mandatory Settlement Conferences
  - B) Initiating the Dispute Resolution Process
- II) Selection of Mediator
  - A) Selection of Certified Mediator by Agreement of the Parties
  - B) Nomination and Court Approval of a Non-Certified Mediator
  - C) Appointment of Mediator by Lincoln County
  - D) Mediator Information Directory
  - E) Disqualification of Mediator
- III) The Mediated Settlement Conference
  - A) Where Conference is to be Held
  - B) When Conference is to be Held
  - C) Request to Extend Deadline for Completion
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  - E) The Mediated Settlement Conference shall not be cause for the Delay of the Construction Project, which is the focus of the Dispute
- IV) Duties of Parties and Other Participants in Formal Dispute Resolution Process
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- V) Authority and Duties of Mediators
  - A) Authority of Mediator.
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- VI) Compensation of the Mediator
  - A) By Agreement.
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- VII) Mediator Certification
- VIII) Rule Amendments
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## **DISPUTE PROCEDURES**

### **RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN LINCOLN COUNTY CONSTRUCTION PROJECTS**

#### **I) INITIATING MEDIATED SETTLEMENT CONFERENCES**

- A) Purpose of Mandatory Settlement Conferences. These Rules are promulgated to implement a system of settlement events, which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.
- B) Initiating the Dispute Resolution Process
- i) Any party to a Lincoln County contract and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least \$15,000 may submit a written request to Lincoln County for mediation of the dispute.
  - ii) Prior to submission of a written request for mediation to Lincoln County, the parties requesting mediation,
    - a) If a prime contractor, must have first submitted its claim to the Project Designer for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit their written request for mediation to Lincoln County.
    - b) If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to Lincoln County.
    - c) If the party requesting mediation is the Project Designer, then it must first submit its claim to Lincoln County to resolve. If the dispute is not resolved with Lincoln County's involvement, then the Project Designer's dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to Lincoln County for mediation.

#### **II) SELECTION OF MEDIATOR**

- A) Selection of Certified Mediator by Agreement of the Parties. The parties may select a certified mediator pursuant to the Rules by agreement within 21 days of requesting mediation. The requesting party shall file with Lincoln County a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.
- B) Nomination and Lincoln County Approval of a Non-Certified Mediator. The parties may select a mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and Lincoln County is otherwise qualified by training or experience to mediate the action.

If the parties select a non-certified mediator, the requesting party shall file with Lincoln County a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of

compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

Lincoln County shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

- C) Appointment of Mediator by Lincoln County. If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall notify Lincoln County and request, on behalf of the parties, that Lincoln County appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, Lincoln County shall appoint a certified attorney mediator. If no preference is expressed, Lincoln County may appoint a certified attorney mediator or a certified non-attorney mediator.
- D) Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program. Lincoln County participates in this program.
- E) Disqualification of Mediator. Any party may request replacement of the mediator by Lincoln County for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

### III) THE MEDIATED SETTLEMENT CONFERENCE

- A) Where Conference is to be Held. Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in Lincoln County. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.
- B) When Conference is to be Held. The deadline for completion of the mediation shall be not less than 30 days or more than 60 days after the naming of the mediator.
- C) Request to Extend Deadline for Completion. A party, or the mediator, may request that Lincoln County extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the County.  
  
Lincoln County may grant the request by setting a new deadline for completion of the conference.
- D) Recesses. The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.
- E) The mediated settlement conference shall not be cause for the delay of the construction project, which is the focus of the dispute.

### IV) DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS

- A) Attendance.
  - i) All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution must attend the mediation. Failure of a party to a construction contract to attend the mediation will result in Lincoln County withholding of monthly payment to that party until such party attends the mediation.

- ii) Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
  - iii) Attorneys on behalf of parties may attend the mediation but are not required to do so.
  - iv) Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.
- B) Finalizing Agreement. If an agreement is reached in the conference, parties to the agreement shall reduce the terms to writing and sign it along with their counsel.
- C) Mediation Fee. The mediation fee shall be paid in accordance with N.C.G.S. §143-128(g).
- D) Failure to compensate mediator. Any party's failure to compensate the mediators in accordance with N.C.G.S. §143-128(g) shall subject that party to a withholding of said amount of money from the party's monthly payment by Lincoln County.

V) **AUTHORITY AND DUTIES OF MEDIATORS**

A) **Authority of Mediator.**

- i) Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
- ii) Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
- iii) Scheduling the Conference.

The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

B) **Duties of Mediator**

- i) The mediator shall define and describe the following at the beginning of the conference:
  - a) The process of mediation;
  - b) The difference between mediation and other forms of conflict resolution;
  - c) The costs of the mediated settlement conference;
  - d) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
  - e) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
  - f) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
  - g) The inadmissibility of conduct and statements as provided by N.C.G.S. §7A-38.1(1);
  - h) The duties and responsibilities of the mediator and the participants; and
  - i) That any agreement reached will be reached by mutual consent.

- ii) Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- iii) Declaring Impasse. It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.
- iv) Reporting Results of Conference. The mediator shall report to Lincoln County within 10 days of the conference whether or not the parties reached an agreement. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform Lincoln County of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. Lincoln County may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
- v) Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the Rules. The mediator shall strictly observe deadlines for completion of the conference unless said time limit is changed by a written order from Lincoln County.

#### VI) COMPENSATION OF THE MEDIATOR

- A) By Agreement. When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of N.C.G.S. §143-128(g) are observed.
- B) By Appointment. When the mediator is appointed by Lincoln County, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

#### VII) MEDIATOR CERTIFICATION

All mediators certified in the Formal Dispute Resolution Program shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina. (Except when otherwise allowed by Lincoln County upon the request of the parties to the mediation.) When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these Rules.

All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of Lincoln County to mediate any dispute in accordance with these Rules.

#### VIII) RULE MAKING.

These Rules are subject to amendment by Lincoln County at any time the County deems it appropriate.

#### IX) TIME LIMITS.

Any time limit provided for by these Rules may be waived or extended by the mediator it appoints for good cause shown. If the mediator has not yet been appointed, the Designer of Record shall decide all waivers or extensions of time for good cause shown.





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**TAX STATEMENT AND CERTIFICATION**

**This is to certify that the foregoing or attached statements is a true and complete statement of all North Carolina and Local Sales or Use Tax paid by the undersigned contractor from, \_\_\_\_\_ 20 \_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_ inclusive for the materials and equipment that were or will become a part of the construction of the:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(THE FOLLOWING PORTION TO BE FILLED OUT BY GENERAL CONTRACTOR ONLY)**

**It if further certified that:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**are all of the sub-contractors that are, or were engaged by this contractor in the performance of this contract and whose tax statements are also enclosed herewith.**

\_\_\_\_\_  
**CONTRACTOR OR SUBCONTRACTOR**

**Sworn and subscribed before me**

**this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.**

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

**My Commission Expires:** \_\_\_\_\_

**SALES TAX REPORT**

**CONTRACTOR** \_\_\_\_\_

**DATE** \_\_\_\_\_

**CONTRACT NO.** \_\_\_\_\_

**MONTH OF** \_\_\_\_\_

INV. DATE	INV. #	SUPPLIER	COST OF MATERIAL	STATE TAX	COUNTY TAX	MECK. CO. TAX	COUNTY OF

This is to certify that the above enumerated sales tax amounts were paid by: \_\_\_\_\_ on items purchased for use in the construction of \_\_\_\_\_ during the period \_\_\_\_\_ through \_\_\_\_\_.

**BY:** \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
Commission expires