



CITY OF DURHAM

FINANCE DEPARTMENT

PURCHASING DIVISION

101 CITY HALL PLAZA (ANNEX)

DURHAM, NC 27701

919.560.4132 • fax 919.560.4325

www.durhamnc.gov/departments/purchasing/

IMPORTANT BID DOWN LOAD NOTICE

To ensure that all bidders using the Purchasing Division's Web Site are kept up to date on any addendums, changes, or informational notices; please send an e-mail to joe.clark@durhamnc.gov , indicating which bid was downloaded. Failure to complete this important step may render your bid as non-responsive.

Thank you.



CITY OF DURHAM

Office of Technology Solutions

101 City Hall Plaza

Fourth Floor

Durham, North Carolina 27701

Request for Proposals

Automatic Vehicle Location

Date of Issue: October 3, 2008

Purpose of Request for Proposal (RFP): The City of Durham (City) is soliciting proposals for qualified agencies to provide an Automatic Vehicle Location (AVL) system and services including planning, installation, training and ongoing maintenance and support.

Project Manager	Marcus Bryant
Project Manager Department	Technology Solutions
Project Manager Telephone Number	919-560-4122
Project Manager E-mail	Marcus.Bryant@durhamnc.gov

Table of Contents

1.	INTRODUCTION AND INSTRUCTIONS.....	3
1.1	General Information.....	3
1.2	Contract Term & Work Schedule.....	4
1.3	Purpose of the RFP.....	4
1.4	Location of Work.....	4
1.5	Notice under the Americans with Disabilities Act (ADA).....	4
1.6	Right of Rejection.....	5
1.7	City of Durham Not Responsible for Preparation Costs.....	5
1.8	Disclosure of Proposal Contents.....	5
1.9	Subcontractors.....	5
1.10	Right to Inspect Place of Business.....	5
1.11	Solicitation Advertising.....	6
1.12	News Releases.....	6
1.13	Assignment.....	6
1.14	Equal Business Opportunity Program Ordinance.....	6
2.	STANDARD INFORMATION.....	7
2.1	Discussions with Responders.....	7
2.2	Prior Experience.....	7
2.3	Evaluation of Proposals.....	7
2.4	City of Durham Business License & Other Required Licenses.....	7
2.5	Contract Negotiations.....	8
2.6	Failure to Negotiate.....	8
3.	STANDARD CONTRACT INFORMATION.....	8
3.1	Insurance Requirements.....	8
3.2	Proposed Payment Procedures.....	9
3.3	Non-Discrimination Clause.....	9
3.4	EEO Provisions.....	10
4.	BACKGROUND INFORMATION.....	11
4.1	Background Information.....	11
5.	SCOPE OF WORK.....	14
5.1	Scope of Work.....	14
5.2	Introduction.....	14
5.3	Understanding of the Project.....	14
5.4	Methodology Used for the Project.....	15
5.5	Experience and Qualifications.....	15
5.6	Fees.....	15
6.	EVALUATION CRITERIA AND VENDOR SELECTION.....	15
6.1	Understanding of the Project—10%.....	15
6.2	Fulfilling Technical Requirements—30%.....	16
6.3	Cost—25%.....	16
6.4	Experience and Qualifications—20%.....	16
6.5	Services Provided – 15%.....	16
7.	Attachment A - City of Durham Contract.....	19
8.	Attachment B – Equal Business Opportunity Ordinance.....	24

1. INTRODUCTION AND INSTRUCTIONS

1.1 General Information

This section contains the general guidelines, return mailing address, contact persons, telephone & fax numbers, and the deadline for receipt of proposals.

- a) Responders must submit 7 copies of their proposals, 6 in writing and 1 electronic, to:

Finance Department

Purchasing Division

Attention: Joseph W. Clark

Project Name: Automatic Vehicle Location System

101 City Hall Plaza (Annex)

DURHAM, NC 27701

- b) Proposals must be received no later than 4:00 p.m. on November 10, 2008.
- c) Delays caused by any delivery service, including the U.S. Postal Service will not be grounds for an extension of the proposal due date and/or time. Any proposals received after that time will be returned unopened. Faxed proposals are not acceptable.
- d) Any responder's failure to submit their proposal before the deadline will cause their response to be disqualified. Late responses or amendments will not be opened or accepted for evaluation.
- e) All other questions regarding this RFP may be submitted prior to the pre-proposal conference by fax or e-mail only to the contact listed below:

Marcus Bryant

Technology Solutions

101 City Hall Plaza

Durham, NC 27701

Telephone: (919) 560-4122 x226

Fax: (919) 560-4808

e-mail: Marcus.Bryant@durhamnc.gov

- f) The Project Manager will post to the City website all questions and answers. Questions that arise following the RFP pre-proposal conference may be similarly faxed or emailed no later than October 27, 2008, and the project manager will post the questions and answers no later than November 3, 2008.
- g) With the exception of the Project Manager, Director and Deputy Director of Technology Solutions, no other City official or employee is empowered to speak for the City with respect to this RFP. Respondents who seek to obtain information, clarification, or interpretation from another City official or employee, are advised that such material is used at the vendor's own risk, and that the City will not be bound by any such representations.

1.2 Contract Term & Work Schedule

The contract term and work schedule set out herein represent the City's best estimate of the schedule that will be followed. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate contract schedule is as follows:

Issue RFP	October 3, 2008
Pre-proposal Conference	October 20, 2008 @ 2:00 p.m.
Final Date to Submit Written Questions	October 27, 2008
Responses to Responder's Questions Posted to City Web Site No Later Than	November 3, 2008
Receive Proposals	November 10, 2008 by 4:00 p.m.
Evaluation Committee selection made	TBD
City Council Contract Approval	TBD
Implementation Begins	TBD
Service Contract Begins	TBD

1.3 Purpose of the RFP

The City seeks qualified organizations, agencies and firms for the provisioning of implementing an Automated Vehicle Location (AVL) system for the City of Durham.

1.4 Location of Work

The location(s) the work is to be performed is the City of Durham, North Carolina.

1.5 Notice under the Americans with Disabilities Act (ADA).

The City will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City

will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact as soon as possible but **no later than 48 hours** before the scheduled event the office of:

Stacey Poston
Acting ADA Coordinator
Voice: 919-560-4197 x254
TTY: 919-560-4809
stacey.poston@durhamnc.gov

1.6 Right of Rejection

The City reserves the right to reject any or all responses.

1.7 City of Durham Not Responsible for Preparation Costs

The City will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any qualifications or statement of qualifications.

1.8 Disclosure of Proposal Contents

All proposals and other material submitted become the property of the City. All information, including detailed price and cost information, will be held in confidence during the evaluation process and before the contract award is issued. Thereafter, proposals will become public information.

1.9 Subcontractors

If subcontractors are used it is the City's preference that responder/prime vendor be responsible for monitoring, managing and maintaining all Service Level Agreements with the City.

1.10 Right to Inspect Place of Business

At reasonable times, the City may inspect those areas of the vendor's place of business that are related to the performance of a contract. If the City makes such an inspection, the vendor must provide reasonable assistance.

1.11 Solicitation Advertising

This solicitation has been advertised on the City's internet site at:

www.durhamnc.gov/departments/purchasing/bids.cfm

Any responses to requests for information or clarifications to the RFP will be posted to this site no later than November 3, 2008.

1.12 News Releases

News releases related to this RFP will not be made without prior approval of the Public Affairs Division, and then only in coordination with the Project Manager.

1.13 Assignment

The vendor may not transfer or assign any portion of the contract.

1.14 Equal Business Opportunity Program Ordinance

- a) It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories. While there are no SDBE participation goals for this project, in accordance with the Ordinance, all vendors are required to provide information requested in the "SDBE Procurement Forms" package, which has been included with this RFP. **Proposals that do not contain the appropriate, completed "Procurement Forms" will be deemed non-responsive and ineligible for consideration.** The "Declaration of Performance," "Participation Documentation," "Managerial Profile," "Equal Opportunity Statement" and the "Employee Breakdown" documents are required of all vendors. In lieu of "Employee Breakdown," vendors may submit a copy of the current EEO-1 form (corporate basis). Other forms in the package should be used as needed.
- b) The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about "SDBE Procurement Forms" should be referred to Deborah Giles or other department staff at (919) 560- 4180.

2. STANDARD INFORMATION

2.1 Discussions with Responders

The City may conduct discussions with responders during the Pre-proposal Conference for the purpose of clarification. The purpose of these discussions will be to ensure full understanding of the requirements of the RFP. Responders may elect to attend through telephone conferencing. The City prefers that questions be submitted in advance, in writing. Any communications after the conference between the City's Project Manager and responders prior to submitting proposals will be in writing. All questions must be submitted no later than close of business October 27, 2008. Questions and responses will be posted to the City's web site no later than November 3, 2008.

2.2 Prior Experience

In order for their offers to be considered responsive, responders must meet these minimum prior experience requirements:

- a) A minimum of five years demonstrated experience in the delivery and support of AVL Solutions.
- b) A minimum of five years demonstrated experience in project management.
- c) A responder's failure to meet these minimum prior experience requirements will cause their qualifications to be considered non-responsive and their response **will be rejected**.
- d) Primary services are to be delivered by the selected vendor.

2.3 Evaluation of Proposals

The City will use an evaluation committee to evaluate all proposals. The evaluation will be based on:

- a) understanding of the project objectives, deliverables and timelines;
- b) fulfilling technical requirements, functions and features;
- c) Cost of the project;
- d) experience, qualifications, certifications, and references; and
- e) meeting RFP guidelines related to services, maintenance and support.

2.4 City of Durham Business License & Other Required Licenses

All organizations doing business with the City are required to comply with all state, local and federal licensing requirements. This includes obtaining a City of Durham business privilege license (if applicable). Firms selected through the RFP process will be required to demonstrate compliance with licensing requirements. All responding firms that are not currently licensed must provide proof of application for licenser and must obtain all necessary licenses before entering into a contractual agreement with the City. To obtain a Privilege License, call (919) 560-4700.

2.5 Contract Negotiations

After completion of the evaluation, including any discussions held with responders during the evaluation, the City may elect to initiate contract negotiations. The option of whether or not to initiate contract negotiations rests solely with the City. If the City elects to initiate contract negotiations, these negotiations cannot involve changes in the City's requirements or the vendor's qualifications, which would, by their nature, affect the basis of the source selection and the competition previously conducted. If contract negotiations are commenced, they will be held at a location to be determined in the City of Durham, North Carolina. The responder will be responsible for their travel and per diem expenses.

2.6 Failure to Negotiate

The City may terminate negotiations with the vendor initially selected and commence negotiations with the next highest ranked responder:

- a) if the selected vendor fails to provide the information required to begin negotiations in a timely manner; or
- b) fails to negotiate in good faith; or
- c) indicates they cannot perform the contract within the budgeted funds available for the project; or
- d) the vendor and the City, after a good faith effort, simply cannot come to terms.

3. STANDARD CONTRACT INFORMATION

3.1 Insurance Requirements

Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence

Automobile Liability Insurance, covering

- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A-VIII or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
City of Durham, North Carolina
attention: Finance Director
101 City Hall Plaza
Durham, NC 27701
- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

3.2 Proposed Payment Procedures

The City will make payments based on a negotiated payment schedule and financial plan. Payment will not be made for services performed or expenses incurred prior to the date of contract and service acceptance. Under no conditions will the City be liable for the payment of any interest charges associated with the cost of the contract.

3.3 Non-Discrimination Clause

The City opposes discrimination on the basis of race and sex and urges all of its vendors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under city contracts.

3.4 EEO Provisions

During the performance of contracts the vendor agrees as follows:

- a) The vendor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The vendor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these provisions.
- b) The vendor shall in all solicitations or advertisements for employees placed by or on behalf of the vendor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- c) The vendor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.
- d) In the event of the vendor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend contracts, in whole or in part, and the City may declare the vendor ineligible for further City contracts.
- e) Unless exempted by the City Council of the City of Durham, the vendor shall include these EEO provisions in every purchase order for goods to be used in performing contracts and in every subcontract related to contracts so that these EEO provisions will be binding upon such subcontractors and vendors.

4. BACKGROUND INFORMATION

4.1 Background Information

Several City of Durham (City) departments have expressed a need to monitor the location and status of vehicles and equipment in their fleet. As fuel and equipment prices rise the City sees AVL as a valuable tool in managing these assets and, as a result, is prepared to seek out and purchase an AVL system capable of monitoring a portion of or its entire fleet.

The project will be based on current and future budgetary availability and the City's current and future needs.

5. SCOPE OF WORK

5.1 Scope of Work

The City of Durham seeks to acquire an Automatic Vehicle Location (AVL) system. The initial implementation will include approximately 125 vehicles, however, the selected system will have sufficient capacity to handle the entire City fleet of 1,100 vehicles. The system shall be available 24/7, except during system maintenance and backup activity. The selected vendor will be required to provide software, installed on vendor provided hardware or (optionally) hardware purchased by the City per vendor specification, as well as all in vehicle hardware necessary for operation of the system. The City is requesting licensing quotes for 125 vehicles and hardware quotes for 75. Since the City may desire to add additional vehicles to the system after the conclusion of the initial contract, vendors should provide per unit quotes for additional hardware and licensing.

5.2 Product Requirements

The primary objective is to install an AVL system capable of tracking the location and status of the City's fleet of 1,000 vehicles and heavy equipment.

- a) The system, in it's entirety, will be located in a City of Durham facility and maintained by City of Durham staff.
- b) The systems user interfaces will make use of GIS data maintained locally by the City and County of Durham in ESRI geodatabase or shapefile format. No third party data will be accepted.
- c) The system shall be configurable to monitor various statistics of each vehicle including but not limited to location, speed, engine on/off status, implement status, and status of installed safety equipment.
- d) The system will include wireless communication equipment capable of transmitting data at administrator defined intervals. The transmission intervals shall be applicable to a single vehicle or a subset of all vehicles.
- e) The system shall provide the ability to store data indefinitely.
- f) The systems user interface/viewer will have the ability to display the realtime status of the entire City fleet of portions thereof.
- g) The system will replay the activity of a vehicle or group of vehicles based on user defined time period.

- h) The system will have the ability to allow an administrator to set alert thresholds on vehicles or groups of vehicles. If a threshold is exceeded the system will have the ability to alert an administrator. Telemetry monitored should include but not be limited to; speed, excessive stop time, safety equipment activated, and out of bounds(outside predefined geographic area).
- i) The system shall have the ability to generate tabular data and reports compatible with common Microsoft Office products(Access, Excel, Word).
- j) Data captured by the system will be easily exportable to a format consumable by standard ESRI software(ArcMap).
- k) The system will store all data collected in MS SQL Server.
- l) The user interface must be compatible with mobile computing devices.
- m) The system will allow vehicles to be placed in user defined groups and will allow the end user to view one or all groups.
- n) Vendor shall provide a one-year comprehensive warranty to begin on the date of the completed system installation with an annual extension option. The warranty for year 2 will be pro-rated to coincide with the City fiscal year, which starts July 1. Maintenance and Support pricing shall be provided for the first 3 years as an annual expense.
- o) All electronic equipment shall be of the latest design, unused and free of defects.
- p) The system shall provide statistical reports on the usage of the product. Methods of monitoring system performance shall be included.
- q) Vendor shall specify the type, quantity and cost of training required for all modules for City personnel.
- r) Vendor shall provide system and user documentation. All documentation shall be written in understandable terms and shall be instructional in all phases of the AVL system. Two copies of all documentation shall be provided in some form of bound manual and indexed by section, plus a CD ROM or DVD for all users' manuals and training materials. The City shall be able to make copies of all material for its internal use.
- s) The City will assign a staff member to act as the Project Manager for the project. The Project Manager will serve as the coordinator of the needs of the internal groups involved in the AVL project and specific representatives from each group will be assigned as required to complete individual department phases. Appropriate City staff will also work directly on the project team to meet specific goals.

5.3 Deliverables

The vendor will be required to provide the following deliverables.

- a) Creation and design of an AVL solution to meet the City’s needs according to Technical Requirements described in Section 5.
- b) Vendor shall assign an experienced project manager who shall maintain a consistent, presence on the project. Vendor’s project manager shall work closely with the City’s Project Manager and shall attend all meetings, on-site, deemed necessary.
- c) All products and equipment provided by the Vendor shall be in new condition. Refurbished products and equipment will not be considered.
- d) Vendor shall provide complete documentation of all system software and hardware, including network diagrams.
- e) Vendor shall provide Scope of Work.
- f) Vendor shall provide an implementation schedule.
- g) Any support agreements with equipment vendors shall be between equipment vendors and the City.
- h) Contracts and Service Agreements – Vendor’s Response shall include copies of proposed contracts.**
 - a. Support
Vendor shall provide a 12-month renewable service and support agreement providing a budget for first year installation, maintenance and support of the AVL solution. Vendor shall include proposed funding mechanism for future years.
 - b. Equipment Warranty
Vendor shall provide warranty services for the new systems for a minimum of the length of the contract from the date of acceptance. Warranty shall cover the cost of all maintenance and repair service, parts, materials, labor and transportation required to maintain the system.

5.4 Attachments

This document contains attachments providing additional information.

Section 10	Attachment A	City of Durham Contract
Section 11	Attachment B	Equal Business Opportunity Ordinance

6. System Implementation Requirements

6.1 This section addresses the requirements necessary to ensure the successful implementation of the AVL system. The vendor shall perform all work as required or necessary to comprehensively complete the installation of the new system.

- a) Deliver a high-quality, reliable, system that is easy to manage and easy to use.
- b) Deliver a solution that covers everything from planning and design, to installation, operation, and optimization.
- c) Work shall be performed with minimal impact on business operations. The City prefers work to be done during normal business hours.
- d) All designs shall provide a path for scalability to accommodate future growth and future or additional applications.
- e) Vendor shall indicate what access is required to computer systems and closets.
- f) Vendor shall provide on-site training classes for all AVL users during the implementation phase.

7. STATEMENT OF QUALIFICATIONS FORMAT AND CONTENT

7.1 Format and Content

The City discourages overly lengthy and costly responses; however, in order for the City to evaluate qualifications fairly and completely, responders should follow the format set out herein and provide all of the information requested.

7.2 Introduction

Responders must include the complete name and address of their agency, mailing address, and telephone number of the person the City should contact regarding the statement of qualifications.

7.3 Understanding of the Project

Responders must provide a comprehensive narrative statement that illustrates their understanding of the requirements of the project and the project schedule.

7.4 Methodology Used for the Project

Responders must provide a comprehensive narrative Statement that sets out the methodology they intend to employ and illustrates how their methodology will serve to accomplish the work and meet the City's project schedule.

7.5 Experience and Qualifications

The City is looking for experienced professionals with a background in the design, implementation, support and maintenance of AVL systems. Respondents shall submit curriculum vitae (CV) for each member of the proposed team focusing on relevant experience and certifications regarding the scope of the RFP. Vendor shall provide verifiable reference information for projects of similar scope and size.

7.6 Fees

Qualifications must include an itemized list of all direct and indirect costs associated with the performance of this contract.

8. EVALUATION CRITERIA AND VENDOR SELECTION

THE TOTAL NUMBER OF POINTS USED
TO SCORE THIS CONTRACT IS 100

8.1 Understanding of the Project—10%

Qualifications will be evaluated against the questions set out below.

- a) How well has the responder demonstrated a thorough understanding of the purpose and scope of the project?
- b) How well has the responder identified pertinent issues and potential problems related to the project?
- c) How well has the responder demonstrated that it understands the deliverables the City expects it to provide?
- d) How well has the responder demonstrated that it understands the City's time schedule and can meet it?
- e) How well does the responder adhere to the City's SDBE program?

8.2 Fulfilling Technical Requirements—30%

Qualifications will be evaluated against the questions set out below.

- a) How well does the solution depict a logical approach to fulfilling the requirements of the RFP?
- b) How well does the solution match and contribute to achieving the objectives set out in the RFP?
- c) How well does the plan interface with the time schedule in the RFP?
- d) How well does the design match required features, functions, and services?

8.3 Cost—25%

How well does the responder solution meet the City's financial requirements?

8.4 Experience and Qualifications—20%

Qualifications will be evaluated against the questions set out below.

1. *Questions regarding the personnel:*

- a) Do the individuals assigned to the project have experience on similar projects?
- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- c) How extensive is the applicable education and experience of the personnel designated to work on the project?

2. *Questions regarding the responder :*

- a) How well has the responder demonstrated experience in completing similar projects on time and within budget?
- b) How successful is the general history of the responder regarding timely and successful completion of projects?
- c) Has the responder provided a list of references?
- d) How reasonable are the responder's cost estimates?

8.5 Services Provided – 15%

- a) How well do the responder's services, maintenance, and support meet the RFP guidelines?
- b) Will the provider use sub-contactors?
- c) What is the locality of the service providers?

9. Attachment A – City of Durham Contract

ATTACHMENTS

5.01 Sample Contract

CONTRACT FOR [*descriptive title*]

This contract is made and entered into as of the ____ day of _____, 20____, by the City of Durham (“City”) and [*name of firm*] (“Contractor”), [*Indicate type of entity, for instance:*

*a corporation organized and existing under the laws of [name of State];
a professional corporation organized and existing under the laws of [name of State]; a
professional association organized and existing under the laws of [name of State]; a limited
partnership organized under the laws of [name of State];
a sole proprietorship;
or a general partnership].*

Sec. 1. Background and Purpose.

Sec. 2. Services and Scope to be Performed. The Contractor shall [*state the services to be provided and the schedule for those services.*]. In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract.

Sec. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4. Compensation. The City shall pay the Contractor for the Work as follows: [*Describe the timing of payments, how amounts are calculated, etc. List the kinds of expenses, if any, that the City will reimburse.*]. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 5. Contractor’s Billings to City. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. [*City staff - Add any special requirements or detail needed in the invoices.*] Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

Sec. 6. Insurance. [*Consult Risk Management.*]

Sec. 7. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City’s rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Exhibits. The following exhibits are made a part of this contract:
Exhibit A [*Insert title of exhibit*] containing [*insert number*] page(s).
Exhibit B [*Insert title of exhibit*] containing [*insert number*] page(s).
In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 9. Termination for Convenience (“TFC”). (a) *Procedure*. Without limiting any party’s right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
[*Insert name and department*]
City of Durham
101 City Hall Plaza
Durham, NC 27701
The fax number is (919)_____.

To the Contractor:
[*Insert name and address*]
The fax number is _____.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Trade Secrets and Confidentiality. The request for proposals section titled “Trade Secrets and Confidentiality” shall apply to any Trade Secrets disclosed to the City during the process leading to the parties’ entering into this Contract (including all of the Contractor’s responses to the RFP). This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. The word “Proposer” used in that section shall mean the “Contractor.”

Sec. 12. Indemnification.

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection “a,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections “a” above and “c” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys’ fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract 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, then subsection “a” above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 13. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed

or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor.

Section 26-10(f) of that chapter provides, in part, “If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Contractor’s alleged violations of its obligations under Chapter 26 and not to the Contractor’s alleged violations of other obligations.

(j) **Prompt Payment to Subcontractors.** Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham. If the City’s Project Manager [*City staff – if your contract uses another title for “Project Manager,” you would substitute it here and in the rest of this section. –RW*] determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Contractor. (b) Nothing in this section shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City’s Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(k) **No Third Party Rights Created.** This contract is intended for the benefit of the City and the Contractor and not any other person.

(l) **Principles of Interpretation and Definitions.** In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) “Duties” includes obligations. (6) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word “shall” is mandatory. (8) The word “day” means calendar day.

(m) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

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

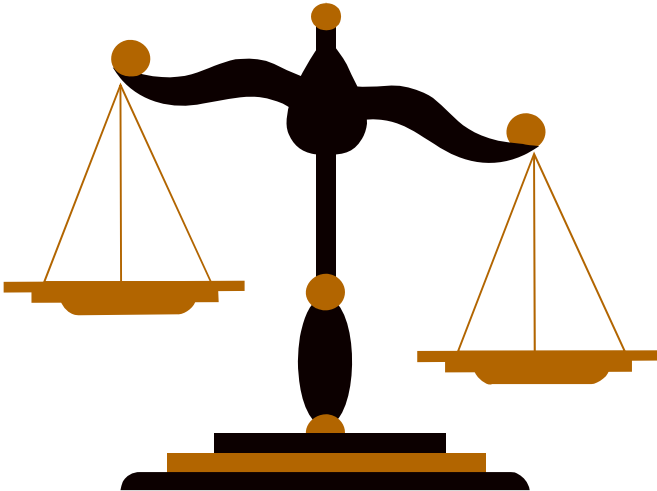
City's finance officer

Date

10. Attachment B – Equal Business Opportunity Ordinance



**CITY OF DURHAM
SMALL DISADVANTAGED BUSINESS ENTERPRISE
PROCUREMENT FORMS**



Equal Opportunity/ Equity Assurance Department

Mailing Address:
101 City Hall Plaza
Durham, North Carolina 27701
Phone: (919) 560-4180
Facsimile: (919) 560-4513

Street Address:
302 E. Pettigrew Street
Durham, North Carolina 27701

SMALL DISADVANTAGED BUSINESS ENTERPRISE ORDINANCE ENTERPRISE ORDINANCE PROCUREMENT DOCUMENTATION

If applicable information is not submitted with your bid, your bid will be deemed non-responsive.

Declaration of Performance must be completed and submitted with your bid.

Managerial Profile must be used to list the managerial persons in your work force who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your bid.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

Complete this page

**DECLARATION OF PERFORMANCE BY
VENDOR/CONTRACTOR**

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:

2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:

3. List anyone outside of your company with whom you will contract on this bid:

The undersigned vendor/contractor certifies that:

- (a) It is normal business practice of the vendor/contractor to perform all elements of the contract with its own work force without the use of subcontractors/vendors; and

- (b) That the above documentation demonstrates this firm's capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.

- (c) The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

Date

Authorized Signature

Complete this page

MANAGERIAL PROFILE

Name of Firm: _____

Contact Person: _____

Title: _____

Address: _____

Telephone No.: _____

Date: _____

List the managerial persons in your work force who will be participating in this project, including name, position, and whether the individuals are minority or woman within the definition* of the City of Durham's Equal Business Opportunity Ordinance.

Managerial Employees

NAME	POSITION	SOCIALLY/ECONOMICALLY DISADVANTAGED* (YES/NO)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

* M-Minority(African American), W-Woman, Other-H-Hispanic, AI-American Indian, AS-Asian American, Handicapped

Complete this page

EQUAL OPPORTUNITY STATEMENT
(You may submit your organization's EEO policy in lieu of this sheet)

EMPLOYEE BREAKDOWN

Part A – Employee Statistics for the Primary Location

MALES

FEMALES

Employment Category	Total Employees	MALES					FEMALES						
		Total Males	Total Females	White	Black	Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

Part B – Employee Statistics for the Consolidated Company (See instructions for this form on whether this part is required.)

MALES

FEMALES

Employment Category	Total Employees	MALES					FEMALES						
		Total Males	Total Females	White	Black	Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

EEO-1 Report may be submitted in lieu of this form