

University of North Carolina at Wilmington Purchasing Services 601 South College Road New Hanover County Wilmington, North Carolina 28403-5615	INVITATION FOR BIDS NO. 72- PCWP7061 Bids will be publicly opened: 03/21/2008 3:00 pm
	Contract Type: Open Market
	Commodity: BMC Software Co, Licenses & Support
Refer <u>ALL</u> Inquiries to: Carol W. Page	Department Name: ITSD
Telephone #: (910) 962-3190 E-Mail: pagec@uncw.edu	Requisition #: R0013268 & R0013316
(See page 2 for mailing instructions.)	
INTERNET ADDRESS: http://www.doa.state.nc.us/PandC/	

NOTICE TO BIDDERS

Sealed bids, subject to the conditions made a part hereof, will be received at the **Purchasing Services office** until the date and time specified above, and then opened, for furnishing and delivering the commodity and services as described herein. **Late bids are not acceptable.** Refer to Page 2 for proper mailing instructions.

Bids submitted via facsimile (FAX) machine in response to this Invitation for Bids will not be acceptable. Bids are subject to rejection unless submitted on this form.

EXECUTION

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.

Failure to execute/sign bid prior to submittal shall render bid invalid.

BIDDER:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		ZIP:	P. O. BOX ZIP:
CITY & STATE & ZIP		TELEPHONE NUMBER:	TOLL FREE TEL. NO.
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO BIDDERS ITEM #21):			
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for 45 days from date of bid opening unless otherwise stated here: _____ days (See Instructions to Bidders, Item 6). Prompt Payment Discount: _____ % _____ days (See Instructions to Bidders, Item 7).

ACCEPTANCE OF BID

If any or all parts of this bid are accepted, an authorized representative of the University of North Carolina Wilmington shall affix their signature hereto and this document and the provisions of the Special Terms and Conditions Specific to this Solicitation, the Specifications, the Instructions to Bidders, and the North Carolina General Contract Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful bidder(s).

FOR UNCW USE ONLY

Offer accepted and contract awarded this _____ day of _____, 20____, by _____
(Authorized representative of the University of North Carolina at Wilmington.)

02/28/08

Recycling of Bid Materials: In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

It is desirable that all responses meet the following requirements:

- All copies are printed **double sided**.
- All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
- Unless absolutely necessary, all bids and copies should **minimize or eliminate use of non-recyclable or non-reusable materials** such as plastic report covers, plastic dividers, vinyl sleeves , and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format that allows for **easy removal and recycling** of paper materials.

MAILING INSTRUCTIONS: Mail only one fully executed bid document, unless otherwise instructed, and only one bid per envelope. Address envelope and insert bid number as shown below. It is the responsibility of the bidder to have the bid in this office by the specified time and date of opening.

BID NO. **72- PCWP7061**
UNIVERSITY OF NORTH CAROLINA AT WILMINGTON
ATTN: CAROL PAGE
PURCHASING SERVICES
601 SOUTH COLLEGE ROAD
WILMINGTON, NC 28403-5615

TABULATIONS: The NC Division of Purchase and Contract has implemented an Interactive Purchasing System (IPS) that allows the public to retrieve bid tabulations electronically from their Internet web site:

<http://www.doa.state.nc.us/PandC/>.

Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be posted on this web site not later than three working days after opening. Lengthy tabulations may not be available from this web site, and requests for these, either verbally or in writing, cannot be honored due to resource constraints.

VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: Vendor Link NC allows vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on their Internet web site: <http://www.doa.state.nc.us/PandC/>.

SPECIAL TERMS AND CONDITIONS SPECIFIC TO THIS SOLICITATION

AWARD OF CONTRACT: It is the University's general intent to award this contract to a single overall bidder on all items. The right is reserved, however, to make multiple awards on the basis of individual items or groups of items, if such action is considered by the University to be most advantageous or to constitute its best interest. Bidders should show unit prices but are also requested to offer a lump sum price (price incentive for a single contract award for all items).

WARRANTY: Manufacturer's standard warranty shall apply.

SPECIFICATIONS

The University seeks price quotations on software licenses (new and renewals of existing) and annual support fees for the BMC Software, Inc. products detailed below.

PRICES QUOTED

<u>Description</u>	<u>QTY</u>	<u>Unit Price</u>	<u>Extended Price</u>
BMC Remedy Service Desk and Action Desk 1 pk Floating License (New licenses)	5		
BMC Basic Support (365 days for new licenses above)	5		
BMC Remedy Service Desk & AR System Fixed 5-pk Renewal – Lsn 982212 (365 days)	1		
BMC Remedy Service Desk & AR System Flt 5-pk Renewal – Lsn 985922 (365 days)	1		
BMC Remedy Service Desk & AR System Flt 5-pk Renewal – Lsn 985923 (365 days)	2		
BMC Remedy Service Desk Application & AR System Renewal – Lsn 993895 (365 days)	1		
BMC Remedy Service Desk Application & AR System Dev Renewal – Lsn 979336 (365 days)	1		
TOTAL			

LUMP SUM PRICE \$ _____

(The Lump Sum price could be lower than the Total Price if the bidder wishes to offer an incentive for a single award on all items (see "Award of Contract").)

HUB VENDOR PARTICIPATION:

UNCW is committed to increase HUB (Historically Underutilized Businesses) vendor participation. In order to be considered as a HUB vendor, the following information must be completed (51% owned and controlled by the following):

- African American
- Asian American
- Hispanic
- American Indian
- Female Owned (non-minority)
- Disabled Owned
- Disabled-Owned Business Enterprise
- Non-Profit Work Center for Blind and Severely Disabled
- Socially and Economically Disadvantaged as defined in 15 U.S.C. 637 (www4.law.cornell.edu/uscode/)
- None of the above

For more definition of these categories refer to:
<http://www.uncw.edu/hub/whatishub/htm>

BIDS ARE SUBJECT TO REJECTION UNLESS SUBMITTED ON THIS FORM

INSTRUCTIONS TO BIDDERS

1. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the North Carolina General Contract Terms and Conditions. The University objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**
By execution and delivery of this document, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
 - **BIDDER:** Company, firm, corporation, partnership, individual, etc., submitting a response to a Invitation for Bids.
 - **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies of the State of North Carolina, unless exempted by statute, rule, or special term and condition specific to this bid.
 - **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.
4. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.
5. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) Special Terms and Conditions Specific to this Solicitation, (2) Specifications, (3) North Carolina General Contract Terms and Conditions, and (4) Instructions to Bidders.
6. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, bidder's offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
7. **PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
8. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with the specifications and the bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bidder will not satisfy this provision. Bids that do not comply with these requirements will be subject to rejection.
10. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this University to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the purchasers at UNCW in Purchasing Services those products or packaging they offer which have recycled content and that are recyclable.
11. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from Purchasing Services at UNCW. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
12. **ACCEPTANCE AND REJECTION:** The University of North Carolina at Wilmington reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. If a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
13. **REFERENCES:** The University reserves the right to require a list of users of the exact item offered. The University may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.

14. **TAXES:**
- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
 - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
15. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance made of the lowest and best bid most advantageous to the University as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the University to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the University or the bidder, the University reserves the right to accept any item or group of items on a multi-item bid.
In addition, on TERM CONTRACTS, the University reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the University to be pertinent or peculiar to the purchase in question.
16. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, the University invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, and non-profit work centers for the blind and severely disabled.
17. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, the University of North Carolina at Wilmington will consider keeping trade secrets which the bidder does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
18. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will be returned, upon request, at the bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become University property. Each individual sample must be labeled with the bidder's name, bid number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
19. **PROTEST PROCEDURES:** When an offeror wishes to protest a contract awarded by UNCW valued in excess of \$10,000, but less than \$200,000, the offeror shall submit a written request for a protest meeting to the Director of Purchasing Services within 15 consecutive calendar days from the date of the contract award. The Director of Purchasing Services shall furnish a copy of this letter to the Vice Chancellor for Business Affairs within 5 consecutive calendar days of receipt. The offeror's letter shall contain specific reasons and any supporting documentation for why they have a concern with the award. If the letter does not contain this information, or if the Director of Purchasing Services determines that a meeting would serve no purpose, then he may, within 5 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request. A copy of the letter shall be forwarded to the Vice Chancellor for Business Affairs.
- If the protest meeting is granted, the Director for Purchasing Services shall attempt to schedule the meeting within 15 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 5 consecutive calendar days from the date of the protest meeting, the Director of Purchasing Services shall respond to the offeror in writing with his decision. A copy of the letter shall be forwarded to the Vice Chancellor for Business Affairs.
- The University shall notify the State Purchasing Officer, in writing, of any further administrative or judicial review of the contract award.
20. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
21. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident bidders. The "Principal Place of Business" is defined as the principal place from which the trade or business of the bidder is directed or managed.

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS
(UNCW – Commodities and Services – 02/28/08)

1. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. The Contractor shall retain all records associated with the eventual performance of the agreed scope of services for a period of three years following completion or termination of the contract.
2. **ADVERTISING:** Contractor agrees not to use the existence of this contract, the name of UNCW, or the name of the State of North Carolina as part of any commercial advertising.
3. **AFFIRMATIVE ACTION:** Contractor shall comply with all Federal and State requirements, rules, Executive Orders, and regulations governing fair employment practices and the employment of individuals with disabilities; specifically, Contractor shall not discriminate against any applicant for employment by reason of race, color, religion, sex, sexual orientation, age, Vietnam era or disabled veteran status, national origin, marital status, or the presence of any sensory, mental, or physical impairment, handicap, or disability.
4. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the University and the Contractor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.
5. **ASSIGNMENT:** Contractor shall neither assign nor transfer its rights and obligations hereunder. However, upon written request approved by the issuing purchasing authority, the University may:
 - a. Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or
 - b. Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).In no event shall such approval and action create any privity between the third party and UNC W or obligate UNCW in any way to any third party.
6. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the University for the purpose set forth in this agreement.
7. **AWARD:** UNCW expressly reserves the right to accept or reject any or all proposals, re-bid, cancel or revise the solicitation, or in evaluating an award, waive informalities or irregularities that in its sole discretion are in the best interest of UNCW, the state of NC and/or the public interest. Once a proposal is received in response to a UNCW solicitation it shall constitute a binding offer from the respective offeror. All proposals shall be valid for a period of not less than 60 days unless otherwise agreed in writing between the parties.
8. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the University for loss of damage of such property.
9. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
10. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the University.
11. **DISPUTES:** Contractor expressly agrees as a condition precedent to the pursuit of any claim or dispute in a judicial or quasi-judicial action arising from the performance of this contract, Contractor shall first be required to submit its complaints in writing to the Director of Purchasing for resolution. The Purchasing Director shall issue a written decision to Contractor, and shall provide a copy of both the complaint and the decision to the Vice Chancellor for Business Affairs (VCBA). If the Contractor disagrees with the Purchasing Director's decision, the Contractor shall submit a written appeal to the VCBA. The VCBA shall review the documentation and render a final UNCW decision. If the Contractor disagrees with this final decision, it may then pursue judicial or other legal recourse.

12. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. The Request for Proposals, any addenda thereto, and the offeror's proposal are incorporated herein by reference as though set forth verbatim. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
13. **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. UNCW reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
14. **HOLD HARMLESS AND INDEMNIFICATION:** Contractor shall hold harmless, defend, and/or indemnify UNCW, the state of North Carolina, and/or their respective officers, agents, and employees, from liability of any kind, including all claims, judgments, fines, settlements, losses, or monetary damages of any kind, accruing to or held by any person, firm, or corporation furnishing or supplying work, services, materials, and/or supplies in connection with the performance of the solicited services. The obligations herein are affirmative duties, and shall survive the termination or completion of services any reason.
15. **INDEPENDENT CONTRACTOR:** Nothing contained herein shall be construed to create or give rise to an agency relationship. The Contractor is an independent contractor and as such shall remain responsible for the work to be performed and for the control and supervision of its employees or subcontractors.
16. **INSPECTION AND ACCEPTANCE:** All products, supplies and materials ordered are subject to UNCW inspection. If defective or not as ordered, they shall be subject to return shipment at our discretion, and the vendor shall be fully responsible for any applicable postage, freight, and restocking charges. Invoices shall not be paid until the UNCW recipient verifies that the items ordered were received and were acceptable.
17. **INSPECTION AT CONTRACTOR'S SITE:** UNCW reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for UNCW determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
18. **INSURANCE:** During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:
 - a. **Worker's Compensation** - The Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is subcontracted, the Contractor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.
 - b. **Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)**
 - c. **Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.**

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the contract.

19. **INVOICE AND PAYMENT:** Invoices showing the PO number, terms of payment, and routing must be mailed to Accounts Payable upon completion of delivery. Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. On all invoices subject to a prompt payment discount, the discount period will be calculated from the date a correct invoice is received or the date delivery is received, whichever is later. Payment by some University departments may be made by procurement card, and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
20. **JURISDICTION AND VENUE:** This contract shall be subject to and governed by the laws of the state of North Carolina. Venue for any action arising from the performance of services shall be New Hanover County, NC.
21. **KEY PERSONNEL:** The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the University's Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified as such in the Contractor's proposal.
22. **LAWS, LICENSING AND CERTIFICATIONS:** The Contractor shall be solely responsible for its compliance with all applicable laws, ordinances, codes, rules, regulations, certifications, accreditation and/or licensing requirements to conduct or fulfill its obligations under this contract.
23. **OUTSOURCING:** If, after award of a contract, the Contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the University. Any contractor or subcontractor providing call or contact center services to the University shall disclose to inbound callers the location from which the call or contact center services are being provided. The Contractor must provide advance notice to the University prior to any relocation of the Contractor, or its employees or subcontractors, or other persons performing services under this contract outside of the United States.
24. **PATENT AND COPYRIGHT:** The contractor shall hold and save UNCW, its officers, agents, and employees harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government. No deliverable items produced in whole or in part under this contract shall be the subject to an application for copyright by or on behalf of the contractor. In addition, all inventions and the copyright in and to any copyrightable work, including but not limited to, copy, art, negatives, photographs, designs, text, software or documentation created as part of the contractor's performance of this contract shall vest in the university, and the contractor agrees to assign all rights therein to the university. Contractor further agrees to provide university with any and all reasonable assistance which university may require to file patent applications, to obtain copyright registrations, or to perfect title in any such inventions or works, including the execution of any documents submitted by the university.
25. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or 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.
26. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the University's Contract Administrator. Acceptance of an offeror's proposal shall include acceptance of any subcontractor(s) specified therein unless otherwise specified.
27. **TAXES:** Effective July 1, 2004, UNCW became exempt from NC state sales tax in accordance with G.S. 105-164.13(52). Our tax-exempt number is printed on the front of all Purchase Orders. The eight items below are NOT exempt and UNCW must pay the following taxes:
- Prepared food and beverage taxes levied and administered by various local governments in the State.
 - Occupancy taxes levied and administered by various local governments in the State.
 - Highway use taxes paid on the purchase, lease or rental of motor vehicles.
 - State sales taxes levied on electricity or local, private or toll telecommunications services.
 - Scrap tire disposal tax levied on new tires.
 - White goods disposal tax levied on new white goods.
 - Dry-Cleaning solvent tax levied on dry-cleaning solvent purchased by a dry-cleaning facility.
 - Excise tax on piped natural gas.

All applicable North Carolina Sales & Use Tax must be shown as a separate item on the invoice.

28. **TERM CONTRACTS / CANCELLATION:** All contract obligations shall prevail for at least 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 30 days prior notice in writing to the other party.
29. **TERM CONTRACTS / QUANTITIES:** The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.
30. **TERM CONTRACTS / PRICE ADJUSTMENTS:** Any price changes, downward or upward, which might be permitted during the contract period, must be general, either by reason of market change or on the part of the contractor to other customers.
- a) Notification: Must be given to UNCW, 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: UNCW shall receive full proportionate benefit immediately at any time during the contract period.
 - c) Increases: All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with UNCW reserving the right to accept or reject the increase, or cancel the contract. Such action by UNCW shall occur not later than 15 days after the receipt by UNCW 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.
31. **TERMINATION FOR CONVENIENCE:** UNCW may terminate this contract for convenience upon written notice to Contractor. Contractor shall be compensated pursuant to the contract on a pro-rata basis consistent with services completed to the date of Contractor receipt of the termination notice. Any and all work generated by Contractor shall be delivered to and constitute the property of UNCW upon the effective date of termination.
32. **TERMINATION FOR CAUSE:** UNCW expressly reserves the right to pursue any and all remedies in law or equity due to Contractor's breach of contract. The University may also terminate this contract for cause upon the entering of a judgment of bankruptcy of insolvency by or against the Contractor.
- a) Due Process: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the obligations under this contract, or if the Contractor commits a material breach of the terms and conditions governing this contract, the University shall thereupon have the right to terminate this contract by giving written notice to the Contractor specifying the grounds for termination. If the Contractor disagrees with the University's grounds for such termination, the Contractor shall be given a 15 day "cure period" to respond to this notice and show cause why the termination action should not be taken. The UNCW Purchasing Director shall review the Contractor's response and issue a written decision. If the Contractor disagrees with this decision, it may submit a written appeal to the University's Vice Chancellor for Business Affairs (VCBA) (see "Disputes"). If the VCBA supports the Purchasing Director's decision, the contract shall be terminated effective the date of the VCBA's written decision. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the University, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the University for damages sustained by the University by virtue of any breach of this agreement, and the University may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the University from such breach can be determined.
 - b) Default and Performance Bond: In case of default by the Contractor, the University may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The University reserves the right to require a performance bond or other acceptable alternative guarantees from the Contractor without expense to the University.
In addition, in the event of default by the Contractor under this contract, the University may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the University has with the Contractor, and de-bar the Contractor from doing future business with the University.
Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the University may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the University, and de-bar the Contractor from doing future business with the University.

- c) Acts of God: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

02/28/08