

**Pender County Board of Education Modular Six Classroom
Specifications and Bid Package**

I. NOTICE TO BIDDERS/ADVERTISEMENT FOR BIDS

Pender County Schools (PCS) is accepting sealed formal bids for the “Modular Six Classroom Project.” Bids are due on June 14, 2021 at 2:00 P.M. No bids will be accepted after this date and time. Bids will be publicly opened on June 15, 2021 at 10:00 A.M.

The scope of the work is for one (1) six-classroom modular unit that will be located at Cape Fear Middle School.

Specifications and bidding information can be picked up at PCS Central Office, 925 Penderlea Hwy., Burgaw, NC 28425. Information related to this request for bids, including specifications and any addenda, will be posted to www.pendercountyschools.net, please be sure to check frequently leading up to and including the bid date. Go to “Our District,” “Departments,” “Operations,” “Important Documents/Forms.” In addition, specifications are available by contacting PCS Construction Manager, William Nelson at william_nelson@pender.k12.nc.us.

All bidders are notified that the provisions of N.C. Gen. Stat. § 143-128, including guidelines for minority business enterprise participation, shall be observed in letting and executing the work. The bidder shall provide WITH THE BID, the Identification of Minority Business Participation form and Affidavit A or B. Bidders are also notified that they must be properly licensed under the state laws governing their respective trades and that applicable provisions of Chapter 87 of the General Statutes of the State of North Carolina shall be observed in the receiving of bids and awarding of contracts for the work. Please note that the provisions of Chapter 87, Article 1 of the General Statutes do not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education and delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four (4) units or sections.

Bid security in the amount of five percent (5%) of the bid amount shall be submitted with each bid. A Performance Bond and separate Labor and Material Payment Bond, each in the full amount of the Agreement shall be submitted prior to executing the work.

Bids shall be submitted under a condition of irrevocability, except as required by law, for a period of sixty (60) days after Bid opening. PCS reserves the right to reject any and all bids, to waive informalities, and to award the Agreement to other than the low bidder should it be deemed in PCS’s best interest.

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III. SUMMARY OF PROJECT

Pender County Schools (PCS) is requesting bids to provide and install one (1) six-classroom modular unit at Cape Fear Middle School, 1882 NC Hwy. 133, Rocky Point, NC 28457.

Summary Scope of Work:

- To supply and install turnkey a total of one (1) six-classroom modular unit.
- Contractor must be a N.C. Licensed Contractor and to retain a N.C. licensed registered architect and engineers to sign and seal drawings and will be responsible for providing all permits, labor, materials, and equipment necessary to construct and install buildings and run/hookup utilities.
- Contractor must comply with the North Carolina State Building Code and N.C. Department of Public Instruction's requirements regarding the purchase and installation of modular units.

Clarifications:

- All material must be new and to code. No asbestos must be used and a letter stating such must be furnished upon completion of project for final payment to be made.
- All safety precautions should be taken upon install and debris should be removed off site and discarded properly.
- Contractor is responsible for all damages.
- All specifications are noted on the Bid Form and are not subject to change.

IV. INSTRUCTIONS TO BIDDERS

1. SECURING DOCUMENTS

- A. Copies of Specifications and Bid Documents are on file at the office of the Project Manager at: Pender County Schools, William Nelson, Construction Manager, 925 Penderlea Hwy., Burgaw, NC 28425 Fax: 910-259-0133

2. EXAMINATION OF SPECIFICATIONS AND BID DOCUMENTS

- A. The Specifications and Bid Documents are intended to describe the complete work necessary including all materials, process, equipment, etc. Therefore, before submitting a bid, each bidder shall carefully examine the specifications and bid documents.
- B. Each bidder shall do all things necessary to become thoroughly familiar with the Project requirements, prior to bidding, as to all existing conditions and limitations under which the work is to be performed and he shall include in his bid a sum to cover the cost of all items necessary to perform the work as set forth in the Specifications and Bid Documents.
- C. No allowance will be made to any bidder because of lack of such examination or knowledge. The submission of a bid shall be construed as conclusive evidence that the bidder has made such examination.

3. INTERPRETATION OF SPECIFICATIONS AND BID DOCUMENTS PRIOR TO BIDDING

- A. If any Bidder contemplating submitting a bid for the consideration of the work is in doubt as to the true meaning of any part of the Specifications or Bid Documents, or finds discrepancies in or omissions from any part of the Specifications or Bid Documents, Bidder may submit a written request for an interpretation or correction thereof, to william_nelson@pender.k12.nc.us by no later than Monday June 7, 2021 at 5:00 p.m.
- B. Any interpretation or correction of the Specifications or Bid Documents will be made by written addendum and will be emailed to each invited bidder of record no later than Thursday June 10, 2021. PCS will not be responsible for any other explanations or interpretation of the Specifications or Bid Documents.
- C. It is the responsibility of each Bidder to verify for itself that Bidder received all Addenda before Bidder submits its bid. It is responsibility of Bidders to be familiar with and to incorporate in their price, all Addenda issued up to the time of bid opening.

4. PRE-BID CONFERENCE

- A. No Prebid Meeting will be held. Contact PCS Project Manager William Nelson via email: william_nelson@pender.k12.nc.us for any questions. Bidders are welcome to contact Mr. Nelson to coordinate a visit to the site.

5. INSURANCE AND BONDS

- A. The contractor is required to provide liability insurance, included with the bid, as indicated below:

- 1. Bidder shall submit a Certificate of Insurance for these operations prior to beginning any work. Insurance coverage must reflect the coverage in the amounts listed below.

- A. Workers Compensation Statutory Employers Liability \$1,000,000
- B. Commercial General Liability for premises/ operations including independent contractor’s protective, personal injury, contractually assumed liability, products and completed operations, broad form property damage (including X, C and U coverage where applicable) \$2,000,000 each occurrence
\$2,000,000 general aggregate
- C. Comprehensive Automobile (including non-owned and hired motor vehicles) \$1,000,000 combined single limit
- D. Professional Errors and Omissions Insurance \$2,000,000
- E. Umbrella Liability Coverage \$5,000,000

- B. Bonds

- 1. Bid Bond. Bid shall be in the form of AIA Document A310-2010 – Bid Bond. The Bidder, at the time of submission of the bid, shall provide the bid bond in the specified form in the penal sum of not less than five (5) percent of the bid sum. The bid bond shall be executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee (PCS) upon said bond if the bidder fails to execute the Agreement in accordance with the bid bond and North Carolina General Statutes.

- 2. Performance and Payment Bonds. The Contractor, prior to the execution of the Agreement, shall provide performance and payment bonds in accordance with N.C. Gen. Stat. § 44A-26, which shall each be in the amount of one hundred (100) percent of the Agreement sum. Bonds shall be in the form of AIA Document A312-2010 -

Performance Bond and separate Labor and Material Payment Bond, covering the faithful performance of the Agreement and the payment of all obligations arising thereunder. The bonds shall be executed by a responsible surety licensed in North Carolina and acceptable to the Owner, with ratings not lower than “A” and financial rating not lower than “XII” in the Best Insurance Guide, latest edition in effect as of the date of the Agreement.

6. FAMILIARITY WITH LAWS

- A. It is assumed that the bidders are familiar with all federal, state and local laws, Ordinances, policies and regulations which may in any manner affect those engaged or employed in the work, or the materials or equipment used in or upon the work, or in any way effect the conduct of the work. No plea of misunderstanding or ignorance on the part of the contractor will in any way serve to modify the provisions of the Agreement.

7. SUBSTITUTIONS

- A. Each bidder represents that its bid is based upon the labor, services, materials and equipment and performance of all work necessary for design and construction of the referenced Project described in the Specifications and Bid Documents. No substitutions will be accepted.

8. MODIFICATIONS AND WITHDRAWAL OF BIDS

- A. Bids may be withdrawn on personal requests from bidders prior to bid opening time.
- B. Withdrawn bids may be submitted up to the submission deadline.
- C. Negligence or error on the part of the bidder in preparing bid confers no right for withdrawal of the bid after it has been opened.
- D. No bid may be withdrawn for thirty (30) consecutive calendar days after opening time except as provided by N.C. Gen. Stat. § 143-129.1.
- E. Telecommunicated (e.g., phone, fax, email) bids will **not** be considered.

9. FORM OF PROPOSAL

- A. Bids shall be submitted upon the Bid Form attached herein, properly executed and with all items filled out. Do not change the wording of the Bid Form and do not add words to the wording of the Bid Form. Unauthorized conditions or limitations of provisions attached to the bid may be cause for rejection of the proposal. Alterations, erasures or interlineations must be explained or noted in the bid over the signature of the bidder.
- B. Federal Taxes: PCS is exempt from and will not pay Federal Excise Taxes.

- C. State Taxes: Applicable North Carolina Sales and Use Taxes and Labor taxes shall be included in bids and shall be shown as a separate line item on all invoices. The Contractor shall provide the Owner a certificate and other supporting data as required by the State of North Carolina to enable the Owner to obtain sales and use tax refunds.
- D. Any fees, service or trip charges should be included in all bid pricing.

10. SUBMISSION OF BIDS

A. Bids are due no later than June 14, 2021 at 2:00 P.M. at the offices of Pender County Schools, Operations Department at 965 Penderlea Hwy., Burgaw, NC 28425 and shall be submitted as follows:

- 1. Submit properly executed Bid Form, in a sealed envelope labeled as follows:

Bidder's Name: _____

Title of Project: Pender County Board of Education Modular Six Classroom Project

- 2. If three (3) qualifying bids are not received, work will be re-advertised and a new bid opening date will be established.
- 3. It is the sole responsibility of the bidder to see its bid is received in proper time.

11. AWARD OR REJECTION OF BIDS

- A. PCS will consider which bid is best suited to the needs of PCS so that it constitutes the best investment of public funds.
- B. The Agreement, if awarded, will be based on, but not necessarily limited to, the following criteria:
 - 1. Cost (best cost advantage for PCS)
 - 2. Conformance with Agreement documents
 - 3. Acceptable date of delivery
 - 4. Acceptable form of bid security
 - 5. Such other reasonable factors as PCS deems fit
- C. Prior to the Owner's issuance of a Purchase Order, notwithstanding any use or reference by the Owner to the term "approve", "award" or "accept" in connection with the apparent low Bid or ultimate Agreement for this Project, the Contract is

not formed unless and until any Project financing is approved and a Purchase Order is actually issued by the Owner.

- D. All bids are subject to PCS's right to reject any or all bids and to waive any informality in the bids or in the bidding. Failure to complete all information required on the bid form may result in rejection of bid. Some of the reasons bids may be rejected include a showing of any unexplained erasures, omissions, alterations of form, additions not called for, added restrictions or qualifying conditions or other irregularities of any kind. PCS reserves the right to reject any bid for any reason it deems for the good of the public or in the interest of the public's welfare.
- E. Bidders must be properly licensed under the laws of the State of North Carolina governing their respective trades.

12. AGREEMENT TIME AND LIQUIDATED DAMAGES

- A. Time is of the essence under this Agreement. The work shall be completed as set out in the Agreement within the time as follows: The Contractor shall achieve substantial completion of the entire work not later than October 15, 2021.

13. EXECUTION OF AGREEMENT

- A. The form of Agreement shall be the Modular Building Construction Agreement set out in Section VIII herein and incorporating by reference this entire Pender County Board of Education Modular Pre-K Classrooms Project Specifications and Bid Package as modified by Addenda, along with the applicable PCS-accepted Contractor's executed Bid Forms, Project Coordination Schedule and signed and sealed Architecture/Engineering Drawings (collectively "Contract Documents"). In the event there are any conflicts, inconsistencies or ambiguities between the Agreement Documents, the interpretation most favorable to PCS shall control.
- B. The bidder to whom the contract is awarded by PCS, shall:
 - within two (2) days after notice of award from PCS, deliver to PCS all required copies of insurance certificates, license documentation, and employee background check documentation. All documents shall be approved by the PCS Project Manager before successful bidder may proceed with the work; and
 - within five (5) days after notice of award from PCS, physically meet with PCS representatives in Pender County, N.C., to visit the project site and prepare a mutually agreed upon Project Coordination Schedule to be attached as an Exhibit to the Modular Building Construction Agreement. The purpose of the Project Coordination Schedule is to set out and coordinate key critical path milestone dates.

- C. Failure or refusal to furnish required documentation in the form satisfactory to PCS and in a timely manner, could subject bidder to forfeit the award of contract.
- D. The successful bidder will be expected to be available to begin work immediately after receiving a notice to proceed from the PCS Project Manager.
- E. Contracts generated as a result of this proposal will obligate the contractor not to discriminate on grounds of race, color, creed, sex, religion or national origin in employment practices.

END OF INSTRUCTIONS TO BIDDERS

V. OWNER-REQUIRED SPECIFICATIONS

Six Classroom Modular Unit

Construction: VB
Occupancy: E-Educational (Pre-K)
Coded for: North Carolina
Design wind speed: 140
Ground snow load: 20 PSF
Seismic Design Category: D

Frame:

Type: Outrigger with 12” beam at 95.5” spacing
Axles and Tires: Underslung Axles/Standard Tires – to stay with owner
Hitches: Detachable - to stay with owner

Floor:

BTM Board: Nylon Impregnated Bottom Board
Insulation: R-30 Kraft or Code Compliant for North Carolina
Joists: 2x8 Wood
Decking: 5/8 Single tongue and groove plywood
Floor Finish: 1/8 LVT (color tbd)
Floor Finish: Restrooms and Janitor Area: Seamless Sheet goods - Corlon: Color White Cliffs

Exterior Walls:

Walls:	2x6 Wood, 16" on center, W/Double Top Plates
Exterior Wall Finish:	26 GA. Hi-Rib Metal (color tbd)
Sheathing:	7/16" OSB
Vapor Barrier:	Tyvek Commercial Building Exterior Wrap
Insulation:	R-19 Kraft or Code Compliant for NC
Mansard:	26 GA. Hi-Rib Metal (color tbd)
Exterior Trim:	26 GA. Hi-Rib Trim Metal (color tbd)

Skirting:

26 GA. Hi-Rib colored metal (tbd) with Access Doors

Interior Walls:

Walls:	2x4 Wood, 16" on center
Walls:	2x4 Wood: Double at the Mate line
Walls:	Plenum and Plumbing walls Per Print
Insulation:	R-11 Sound Reduction Batts
Interior Finish:	5/8" Type X fire rated vinyl covered gypsum (color tbd)
Interior Finish:	96" FRP on 5/8" GYP Backer: White (RR's and JAN.)
Interior Finish:	Roppe 4 inch 100-Black Cove Base

Roof:

Truss:	Transverse, 1/4": 12" Pitch, 24"O.C.,
Decking:	7/16" 4'x8' OSB
Mate Beam:	4L 3/4" Plywood 24"H – Max Span 29'
Overhang:	1 foot overhang with vented soffit
Ceiling Finish:	Sprayed popcorn textured design
Finished Ceiling Height:	8'-0" A.F.F
Finished Ceiling Height:	7'-6" A.F.F. in Fire Rated Corridors
Insulation:	R-60 Kraft or Code Compliant for all states listed
Roofing:	45 mil EPDM black rubber roof
Mansard:	2" Overhang Sides -Flat Colored to be determined

Doors:

Exterior Door:	(2) - 72x80 Commercial painted Steel Door with Steel Jamb (color to be determined) with continuous hinge. (Possible Color SW 7073 network gray – TBD)
Exterior Door Lite:	4"x24" Window
Exterior Door Hardware:	Von Duprin 99 Exit Device with pull trim CD99NL-36-26D
Exterior Door Hardware:	LCN Closure Smoothee 4111
Interior Door:	36x80 20 Minute Rated Flush Door, Imperial Oak finish, w/4" x24" window
Interior Door Frame:	Painted steel frame (color to be determined) Interior Door
Interior Door Hardware:	Grade 1 Classroom function locks, Schlage brand

Door Hardware: Schlage Key Removable Mullion KR822-689-8 (exterior)

Door Hardware: Schlage Brand Removable cores for all doors

Windows:

Exterior Window Size: (8) 36X60 Vertical slide insulated, bronze tinted w/ insect screens

Window Glazing: Low E Tinted Glass

Window Covering: 1” White Vinyl Mini-Blinds

Electrical:

Service: (2) 200 amp Services

Wiring: 12-2 Romex and MC Cable

Interior Lights: Surface mounted fluorescent fixtures w/ T-8 bulbs and diffused covers

Emergency Lights: Emergency lights/ exit signs with battery backup as required by code

Remote Heads: Dual Exterior Remote Heads

Exterior Lights: RAB Bronze Colored WP2LED37

Receptacles: 110 Volt Type Receptacles. GFI (TP), WP, Heat tape as required by code

Empty J-Boxes: (10)Single Gage Unit w/ 3/4” Conduit at each doorway stubbed down into crawl space (for fire pull stations)
(2) Single Gage Units w/ 3/4” conduits in each classroom, stubbed down into floor for technology

Smoke detectors as per code

Exhaust Fans: Exhaust Fans in Restrooms

Switches: Ceiling Mounted Occupancy Sensors

No quick wiring, 20 AMP Receptacles (should be wrapped around screw terminals on receptacles). Junction Box wire nut connections between units instead of plug-ins.

Technology for Classrooms: (see attachment)

Plumbing:

Plumbing: CPVC Supply and PVC DWV

Restrooms: (1) Handicap Accessible Restroom

Flush Fixtures: (7) elongated toilets with toilet paper holders

(3) Handicap toilet with grab bars and toilet paper holder

(3) Urinals with flush valves

(10) Toilet paper holders

Lavatories: (7) Wall mounted lavatory with metering faucets- Mirrors above sinks.

(7) Vinyl anti scald covers for trap and supply

Service Sink: Mop sink w/ legs

Water Heater: 20 Gallon Tank

Outside Hose Bibs: Front and Rear vandal-proof fixture/bib

Shut Offs: Required for each individual fixture, PRV at accessible supply water entrance

Vents: Roof

H.V.A.C.:

H.V.A.C.: NO HEAT PUMPS OR ENERGY RECOVERY WHEELS
AC 3.0 ton Wall Hung Bard unit with Electric Heat strip,
centered on the hitch

Ductwork: Overhead Ducted Supply the Length of Each Classroom, as
per code

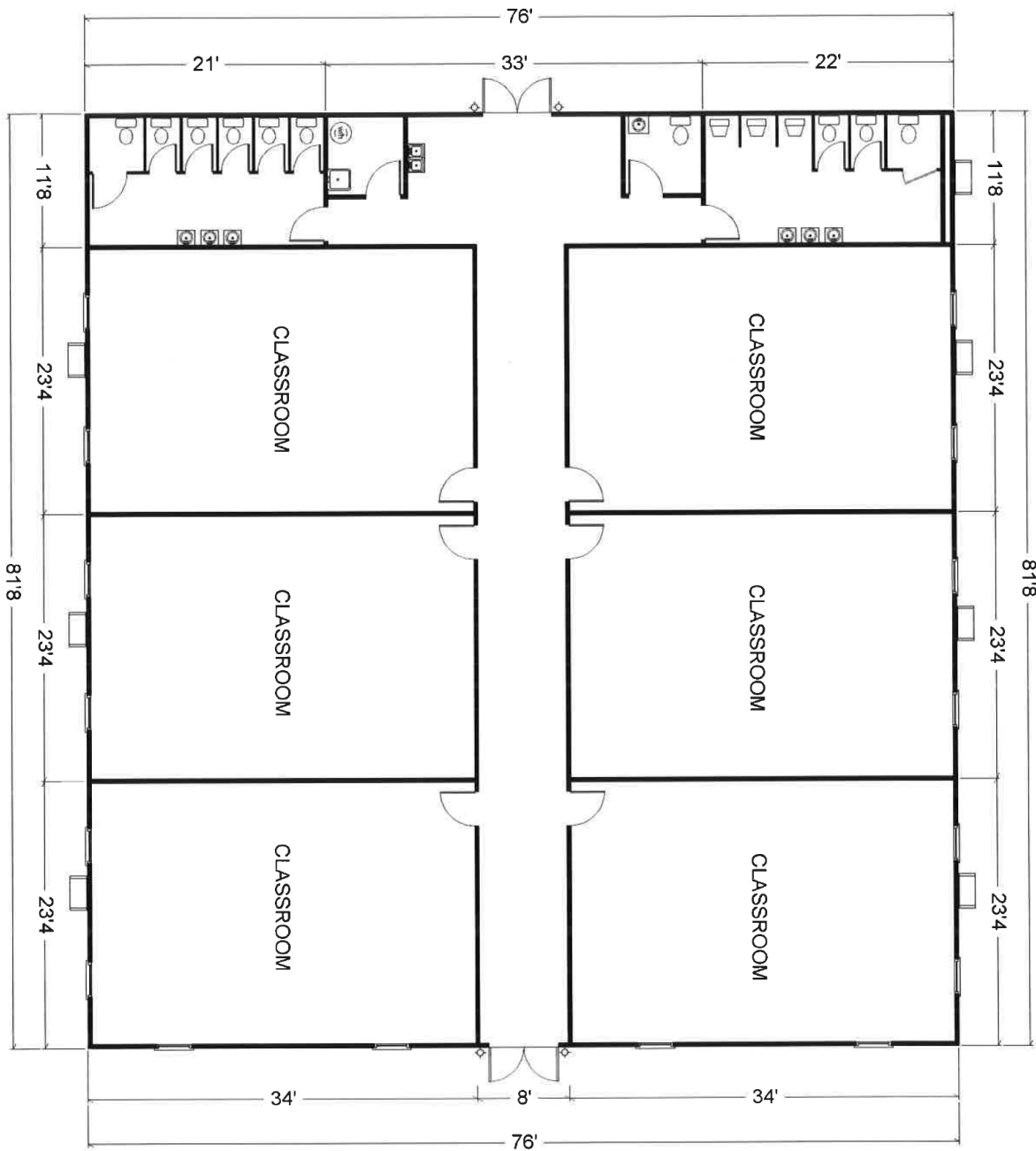
Ductwork: Overhead Ducted Return – Grills at least 6” from Plenum,
as per code.

Exhaust Fan in Bathrooms as per code

Thermostat: (4) Factory Standard Programmable Thermostats

Decking:

Provide (2) sets of aluminum decks and handicap ramps at
80”x 72 exterior doors. Provide (4) aluminum landings and
steps at 80” x 36” exterior doors



END OF OWNER-REQUIRED SPECIFICATIONS

VI. GENERAL CONDITIONS

1. From “Public Schools of North Carolina Facilities Guidelines” (revised January 2019) on Mobile/Modular Buildings and Modular Construction:
 - Mobile/modular units must meet requirements of the current edition of the N.C. State Building Code (including amendments) for Educational Occupancy. They must also meet requirements of applicable Plumbing, Mechanical, and Electrical Codes, local zoning ordinances and other applicable legal provisions. Shop drawings for each unit must bear the Approval Stamp from a third-party certification agency approved by the NC Department of Insurance. Manufacturers must be approved for commercial construction by the DOI’s Manufactured Building Section. Listings of approved third-party certification agencies and approved modular manufacturers are available from the Department of Insurance, Manufactured Building Section (https://www.ncdoi.com/OSFM/Manufactured_Building.aspx).
 - Design, construction and placement of mobile/modular units must meet local building code provisions such as design loads for wind and snow.
 - Heating devices placed in units must not be fossil fuel-fired.
 - In general, mobile/modular units that meet applicable Code requirements for functionality and safety are considered to be in compliance with School Planning review guidelines.
 - Building Plans:
 - a. Provide architectural drawings from manufacturer showing compliance with N.C. State Building Code, including accessibility provisions, Fire Code and Plumbing Code. Drawings are to bear the seal and signature, with current date, of an architect or engineer licensed to practice in North Carolina.
 - b. Provide manufacturer’s plumbing, mechanical and electrical drawings bearing the seal and signature, with current date, of an engineer licensed to practice in North Carolina.
2. The Contractor will provide turnkey service.
3. The Contractor awarded the contract must adhere to all state, city and county codes and shall obtain any necessary permits.
4. All specifications are noted in the Specifications and Informal Bid Package and are not subject to change.
5. The Contractor shall be familiar with and understand all federal, state and local laws, ordinances and regulations which may in any manner affect those engaged or employed in the work, or the materials or equipment used in or upon the work, or in any way affect the conduct of the work. No plea of misunderstanding or ignorance on the part of the contractor will in any way serve to modify the provisions of the contract.
6. The Contractor is required to ensure that all employees have criminal background checks and pose no risk to the student/staff population. Contractor shall submit a list of employee names that will be working on site along with a statement that they have

received a criminal background check, date of background check and that they pose no risk to student/staff population.

7. All workers must obtain approval through the E-verify system and be legal to work in the United States.
8. Contractor's personnel shall adhere to all Pender County Board of Education Policies. Information most relevant to staff on school property includes:
 - Policy 5022: Registered Sex Offenders – Prohibits anyone registered under the Sex Offender Program from being on school property.
 - Policy 5025: Prohibition of Alcoholic Beverages – Prohibits the possession or consumption of alcoholic beverages on school property.
 - Policy 5026-7250: Smoking and Tobacco Products – Prohibits the use or display of tobacco products.
 - Policy 5027-7275: Weapons and Explosives Prohibited – Prohibits the possession of weapons/explosives on school property.
10. All employees must be legally employed and working within their allowed scope as defined by the U.S. Department of Labor.
11. All MSDS sheets for any herbicide to be used on site shall be submitted to the PCS Project Manager prior to beginning work.
13. The Contractor shall be prepared to begin work immediately upon issuance of purchase order.

END OF GENERAL CONDITIONS

VII. BID FORM

**PENDER COUNTY BOARD OF EDUCATION
BID FORM**

(Use this form when submitting bid)

Informal Bidding Process – (Utilizing modified AIA Agreement) Projects with construction or repair work requiring the estimated expenditure of public money in an amount between \$30,000 and less than \$500,000 requires informal bidding under N.C. Gen. Stat. § 143-131(a) and Pender County Board of Education Policy 6420 – Contracts with the Board.

Date: _____

Bidder:

Project:

To: Pender County Schools
Attn: William Nelson, Construction Manager
965 Penderlea Hwy.
Burgaw, NC 28425

The undersigned bidder, after carefully investigating the existing conditions of the project site and having thoroughly familiarized itself and accepting all terms of the Bidding and Contract Documents, including this executed Bid Form, proposes to furnish all labor, services, materials, equipment, taxes, bonds and other costs and perform all work necessary for construction of the referenced Project, in strict accordance with all the Bidding Documents noted above, including Addenda, and in accordance with all applicable federal, state, city and county laws, regulations and codes, for the consideration of the following amounts:

1. Base Bid: Stipulated Sum (Lump Sum) price for the entire work, completed in accordance with the Contract Documents:

One (1) six classroom modular unit at Cape Fear Middle School \$ _____

TOTAL BASE BID: \$ _____

Applicable North Carolina Sales and Use Taxes and Labor taxes shall be included in the Contractor's Base Bid and shall be shown as a separate line item on the final invoice.

2. Subcontractors (if applicable): Pursuant to North Carolina General Statutes § 143-128(d), the undersigned bidder identifies the following contractors selected for the respective subdivision or branches of work as applicable:

General Contractor

HVAC Subcontractor

Plumbing Subcontractor

Electrical Subcontractor

3. Allowances: Not used.

4. Unit Prices: Not used.

5. Alternates: Not used.

6. Bid Security: Bid security in the amount of five (5) percent of the bid sum is submitted herewith in accordance with Instructions to Bidders in the form of (check one):

_____ Bid Bond (AIA Document A310-2010)

_____ Cashier's Check or Certified Check

_____ Other security, as stipulated by N.C. Gen. Stat. § 143-129(b).

7. Acknowledgements and Representations:

a. The undersigned bidder understands that time is of the essence and agrees that the work must achieve Substantial Completion on or before October 15, 2021.

b. If notice of acceptance of this bid is given to the undersigned within sixty (60) days after the date of opening of bids, or any time thereafter before this bid is withdrawn, the undersigned will execute and deliver an Agreement in the prescribed form promptly after it has been presented to the undersigned for signature. Certificates of Insurance and Performance and Payment Bonds shall be

furnished to PCS at the execution of this Agreement.

- c. Upon request of PCS, the undersigned bidder agrees to submit evidence in affidavit form of applicable experience, adequate financial resources, work in hand capacity, adequate organization, and acceptable past performance.
- d. The undersigned bidder certifies that neither he/she, nor any official, agent or employee has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid. The person signing this bid form represents that he/she has full authority and representative capacity to execute this bid form in the capacity indicated below.
- e. By submitting a bid, bidder indicates that all considerations issued by addendum are incorporated in the bid. The undersigned acknowledges receipt of the following Addenda:

<u>Addenda No.</u>	<u>Date</u>
_____	_____
_____	_____

I certify that the firm signing this bid and registered under that name is legally qualified to perform all work included in the scope of the Agreement as determined by the State of North Carolina, in granting the registration:

Name of Bidder: _____
Company

By: _____
(Signature)

(Typed/printed name) _____
(Title)

Address: _____

N.C. License #: _____

End of Bid Form

VIII. MODULAR BUILDING CONSTRUCTION AGREEMENT

[see following page]

Modular Building Construction Agreement

Pender County Schools Modular Six Classrooms Project

This Modular Building Construction Agreement (“Agreement”) entered into on _____, 2021, between Pender County Board of Education (“Owner”) and the Contractor _____ (“Contractor”), is for the Contractor to provide design, construction, services, materials and equipment for the Pender County Schools’ Modular Pre-K Classrooms Project (“Project”). The Owner and Contractor agree as follows:

1. **Independent Contractor.** Contractor shall be an independent Contractor in all its activities pursuant to this Agreement. Contractor is not to be considered Owner’s employee or agent for any purpose including, but not limited to, the accrual of any employee benefits.
2. **Scope of Work.** Contractor will furnish all design, construction, labor, services, equipment, tools, materials, supplies, transportation, tests and supervision required to complete the work described in the Specifications and Bid Documents (“Work”). All Work shall be performed in a good and workmanlike manner and shall conform to the best standard practice for the type of Work involved and where care, skill and precision are required. Contractor shall exercise due diligence and take all reasonable precautions in performance of the Work and in inspection of materials, equipment and workmanship entering into Work.
3. **Time.** Time is of the essence of this Agreement.
4. **Payment for Work.** Contractor warrants that title to all Work will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an application for payment, all Work shall be free and clear of claims, security interests, purported liens or other encumbrances adverse to Owner’s interests. If any such purported liens are filed, Contractor shall cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from date of notice.
5. **Permits and Licenses.** Contractor represents and warrants that it is and will remain properly licensed at all times in the performance of Work. Contractor shall obtain and pay for all licenses and permits that are required for it to perform Work.
6. **Compliance with Laws.** Contractor shall comply with all federal, state and local laws, ordinances, rules and regulations applicable to Work. Contractor also shall comply with all rules and policies of Owner.
7. **Jessica Lunsford Act.** As required by N.C.G.S. § 115C-332.1, all Contractors, subcontractors, consultants, sub-consultants, and vendors shall conduct prior to the start of service and annually thereafter a review of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry for all employees who will provide services under this Agreement that involve direct interaction with Pender County Board of Education students. For Contractor’s convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. Any employee of the contractor, subcontractor, consultant, sub-

consultant, or vendor found to be registered on any of the lists identified herein shall not perform any work under this Agreement and shall not be permitted to enter property owned by Pender County Schools or Pender County on behalf of Pender County Schools. Failure to comply may result in legal action and termination of the contract for default.

- 8. Insurance.** The Contractor shall provide to Owner certificates of insurance evidencing the following insurance: (a) commercial general liability with limits of not less than \$2,000,000 per occurrence and in the aggregate; (b) automobile liability with coverage for owned, hired, and non-owned automobiles, with limits of not less than \$1,000,000; (c) workers' compensation as required by statute, including employer's liability coverage; (d) umbrella liability insurance with limits of not less than \$5,000,000; and (e) professional liability coverage with policy limits the greater of the full amount maintained under the Contractor's practice policy, or Two Million Dollars (\$2,000,000.00) per claim and in the aggregate, to be maintained for three (3) years after final payment to the Contractor. Owner shall be named as an additional insured under Contractor's commercial general, umbrella and automobile liability insurance.
- 9. Warranty of Work.** Contractor will, at its own expense, at request of Owner, promptly replace or repair any defective or deficient Work for a period of one year after completion of Work. The express warranty contained in this section shall not diminish any of Owner's rights against Contractor with respect to time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct Work.
- 10. Safety.** Contractor shall be solely responsible for safety with respect to the Work of this Agreement and shall establish and enforce safe working procedures at all times during its performance of Work in accordance with all federal, state and local laws, ordinances, rules and regulations pertaining to safety.
- 11. Risk of Loss.** The risk of loss of and damage to the Work which is the subject of this Agreement shall be and remain with the Contractor until final completion.
- 12. Defective Work.** In the event of any article, service, or process sold and delivered or sold and performed hereunder shall be defective in any respect whatsoever, Contractor will indemnify and save harmless Owner from all loss or payment of all sums of money by reason of all accidents, injuries or damages to person or property that may happen to occur in connection with use or sale of such article, or process and are contributed to by said defective condition.
- 13. Indemnity.** Contractor shall indemnify and hold harmless the Pender County Board of Education, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorney's fees and liability that any of them may sustain (a) arising out of Contractor's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Contractor's performance or lack of performance of the terms and conditions of the Agreement. In the event that any Goods or Services sold and delivered or sold and performed under the Agreement Documents shall be defective in any respect whatsoever, Contractor shall indemnify and save harmless the Pender County Board of Education, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services

and are contributed to by said condition. In the event Contractor, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of PCBOE in the performance of the Agreement Documents, Contractor agrees that it will indemnify and hold harmless PCBOE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.

14. Termination.

- (a) **Default Termination.** If Contractor fails or refuses to supply sufficient and properly skilled labor, equipment or materials, or fails in any respect to diligently prosecute Work, or otherwise is in default or breach of any term of this Agreement, Owner may terminate this Agreement upon 24 hours' written notice. In the event of such termination, Contractor immediately will stop work and remove its employees from Owner' property. Owner may complete the Work in whatever way it determines best, and at completion of the Work shall pay Contractor for the value of Work performed by Contractor (excluding profit) but unpaid prior to termination, less any costs incurred by Owner to correct any deficiencies or defects attributable to Contractor's work.
- (b) **Termination for Convenience.** Owner may terminate this Agreement at any time by written notice to Contractor. Such termination shall be effective in the manner specified in such written notice. Upon termination for convenience, Owner will pay Contractor for Work performed to date of termination. Contractor shall accept such payment in full and final payment and shall make no claim of any kind against Owner, including but not limited to any claim for any additional

15. Dispute Resolution. If a dispute arises out of or relates to the Agreement, or the breach of the Agreement, the parties agree first to try in good faith to settle the dispute through negotiation. If the dispute cannot be settled through negotiation, Contractor agrees to offer to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, or administered by another mediator jointly selected by the parties, before resorting to litigation.

16. No Waiver. The Owner not insisting upon strict compliance with any of the provisions of the Agreement, or not exercising any of its options provided herein, shall not be construed as a waiver of its right thereafter to require such compliance or to exercise any such options.

17. Assignment. Neither this Agreement, nor any payments to be earned pursuant to this Agreement, may be assigned by Contractor without the prior written consent of the Owner.

18. Patents and Copyright. In the event any article, service, or process sold, delivered and/or performed hereunder shall be covered by any patent, copyright, or application for either, Contractor will indemnify and save harmless the Owner from any and all loss, cost or expenses on account of any and all claims, suits, or judgments on account of the sale of such article or the use of service or process in violation of copyright, or application for either rights under such patent, copyright or application for either.

19. MSDS. Current Material Safety Data Sheets, if and when applicable to the Agreement, shall be provided by Contractor in accordance with all regulations.

20. Strict compliance. Owner may at any time insist upon strict compliance with this Agreement, the Specifications and Bid Documents notwithstanding any previous custom, practice or course of dealing to the contrary.

21. Rules of construction. Notwithstanding any language to the contrary, the terms and conditions of sale as stated in this Agreement govern in the event of conflict with any terms of Contractor's proposal, and are not subject to change by reason of any written or verbal statements by Contractor or by any terms stated in Contractor's acknowledgement unless same be accepted in writing by the Owner.

22. Law of Agreement. This Agreement shall be governed and interpreted pursuant to the Laws of the State of North Carolina. Any legal actions arising from default of this contract shall be brought only in the County of Pender, State of North Carolina.

23. Performance and Payment Bonds. The Contractor, prior to the execution of the Agreement, shall provide performance and payment bonds in accordance with North Carolina General Statutes § 44A-26, which shall each be in the amount of one hundred (100) percent of the contract sum. Bonds shall be in the form of AIA Document A312-2010 - Performance Bond and separate Labor and Material Payment Bond, covering the faithful performance of the Agreement and the payment of all obligations arising thereunder. The bonds shall be executed by a responsible surety licensed in North Carolina and acceptable to the Owner, with ratings not lower than "A" and financial rating not lower than "XII" in the Best Insurance Guide, latest edition in effect as of the date of the Agreement.

24. Exhibits. The following Exhibits are hereby incorporated into this Agreement, regardless of whether physically attached to this Agreement, and are listed below.

- Exhibit A Pender County Board of Education Modular Pre-K Classrooms Specifications and Bid Package, dated _____, 2021, with Addenda.
- Exhibit B Bid Form executed by _____, dated _____, 2021.
- Exhibit C Project Coordination Schedule - to be prepared and mutually agreed upon by Parties prior to execution of this Agreement.
- Exhibit D Signed and sealed architect/engineering drawings furnished by Contractor to be attached herein after Owner acceptance.
- Exhibit E Pender County Board of Education Addendum to contract for Goods and Services for FEMA Public Assistance Program.

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act as set forth in Section 115C-441(a1) of the General Statutes of North Carolina.

Date

PCS Chief Finance Officer

CONTRACTOR:

By: _____

Title: _____

OWNER:

Pender County Board of Education

By: _____

Title: _____

IX. MBE PROVISIONS AND FORMS

MBE CONTRACT PROVISIONS

A. MBE SUBCONTRACT GOALS:

The goals for participation by Minority Business Enterprises as subcontractors on this project have been set at **MBE: 10%**

B. DOCUMENTATION REQUIRED:

Bidders shall furnish written notice to the Owner of all items of work, which will be subcontracted prior to bid, as soon as these items are identified.

1. Items the prime bidders must submit with the bid:

- **Identification of Minority Business Participation Form**

AND

- **Affidavit A – Listing of Good Faith Efforts** (if Contractor is subcontracting any work)

OR

- **Affidavit B – Intent to Perform Contract with Own Workforce** (If Contractor is self-performing all the work with their own workforce)

2. Within 72 hours after the bid, the low bidder must provide the following information. Bidders who are subcontracting anything must submit:

- **Affidavit C – Portion of the Work to Be Performed by Minority Firms** if they met or exceed ten (10) percent MBE participation.

OR

- **Affidavit D – Good Faith Efforts** if they did not meet or exceed ten (10) percent MBE participation. This should include the good faith efforts conducted by the Contractor.

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.

AFFIDAVIT A
LISTING OF THE GOOD FAITH EFFORT
Pender County Schools

Affidavit of _____

(Name of Bidder)

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

(A minimum of 5 areas must be checked in order to have achieved a "good faith effort")

- _____ 1 - Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- _____ 2 - Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- _____ 3 - Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- _____ 4 - Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- _____ 5 - Attended pre-bid meetings scheduled by the public owner.
- _____ 6 - Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- _____ 7 - Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- _____ 8 - Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- _____ 9 - Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- _____ 10 - Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands.

In accordance with N.C. Gen. Stat. § 143-128.2(d), the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with PCS. Failure to abide by this statutory provision will constitute a breach of the contract. The undersigned hereby certifies that he or she has read the

terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____

Name of Authorized Officer: _____

Signature: _____

Title: _____

State of North Carolina

County of _____

SEAL

Subscribed and sworn to before me this _____ day of _____, 2021

Notary Public _____

My commission expires _____

AFFIDAVIT B
Intent to Perform Agreement with Own Workforce
Pender County Schools

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform one hundred (100) percent of the work required for
the _____ Agreement.
(Name of Project)

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

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

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

SEAL State of North Carolina
County of _____
Subscribed and sworn to before me this ____ day of _____, 2021

Notary Public _____

My commission expires _____

AFFIDAVIT C
Portion of the Work to Be Performed by Minority Firms
Pender County Schools

****NOTE: THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL****

If the portion of the work to be executed by minority businesses as defined in N.C. Gen. Stat. § 143-128.2(g) is equal to or greater than ten (10) percent of the bidder's total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsive bidder within 72 hours after notification of being low bidder.

Affidavit of _____
(Name of Bidder)

I do hereby certify that on the _____ (Project Name)

Project ID# _____ Amount of Bid \$ _____

I will expend a minimum of _____ percent of the total dollar amount of the Agreement with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below:

Name and Phone #	Minority Category*	Work Description	Dollar Value

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

Pursuant to N.C. Gen. Stat. § 143-128.2(d), the undersigned will enter into a formal agreement with minority firms for work listed in this schedule conditional upon execution of an Agreement with PCS. Failure to fulfill this commitment may constitute a breach of this Agreement.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

State of North Carolina

County of _____

SEAL

Subscribed and sworn to before me this ____ day of _____, 2021

Notary Public _____

My commission expires _____

AFFIDAVIT D
Good Faith Efforts
Pender County Schools

If the goal of ten (10) percent participation by minority business is not achieved, the Bidder shall provide the following documentation to PCS of his or her good faith efforts:

Affidavit of _____ (Name of Bidder)

I do certify the attached documentation as true and accurate representation of my good faith efforts.

Name and Phone #	Minority Category*	Work Description	Dollar Value

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

Documentation of the Bidder’s good faith efforts to meet the goals set forth in these provisions. Examples of documentation include, but are not limited to, the following evidence:

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

loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

State of North Carolina

County of _____

SEAL Subscribed and sworn to before me this _____ day of _____, 2021

Notary Public _____

My commission expires _____

Pender County Board of Education

Addendum to Contract for Goods and Services for FEMA Public Assistance Program

I. Purpose: This purpose of this addendum is to ensure that the Pender County Board of Education (Board), the Contractor, (collectively, the parties) and the contract entered into between the parties, complies with and satisfy any and all obligations, responsibilities or duties pursuant to all applicable federal law, regulations, executive orders, Federal Emergency Management Agency (FEMA) policies, procedures, and directives, including but not limited to, contract requirements for the FEMA's Public Assistance Program.

II. Definitions

A. **Construction Work.** "Construction work" is the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction. (See 41 C.F.R. § 60-1.3).

B. **Federal Assisted Construction Contract.** "Federally assisted construction contract" is any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work. (See 41 C.F.R. § 60-1.3)

III. Remedies

The Board reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of any violation breach of contract by either party, including but not limited to any administrative, contractual or legal remedies applicable as well as any appropriate sanctions and/or penalties.

IV. Termination for Cause

The Board may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Contractor. In addition to any

other remedies available to the Board in law or equity, the Board may procure upon such terms as the Board shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Contractor shall be liable to the Board for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.

V. Termination for Convenience:

For good cause as determined by the Board in good faith, the Board shall have the right to terminate any work under this Contract, in whole or in part, at any time at its complete discretion by providing 30 days' notice in writing from Board to Contractor. If the Contract is terminated by the Board in accordance with this paragraph, Contractor will be paid in an amount which bears the same ratio to the total compensation as does the Goods or Services actually delivered or performed to the total originally contemplated in the Contract. The Board will not be liable to Contractor for any costs for completed Goods, Goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Contract.

VI. Changes

The Board may at any time, by a written change order, make changes within the general scope of the contract, in any one or more of the following: (a) specifications (including drawings and designs); (b) method or manner of performance of the work; (c) furnished facilities, equipment, materials, services, or site; or (d) the schedule for the performance of work. If any such change causes an increase or decrease in the cost of the work under the contract which was changed, an equitable adjustment may be made in the contract price and the contract may be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Contractor of the notification of change. Any change in the cost of work shall be authorized in writing by both parties.

VII. Equal Employment Opportunity.

A. During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

VIII. Davis Bacon Act and Copeland Anti-Kickback Act

A. **Davis-Bacon Act:** If, and to the extent applicable, Contractor shall comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). (See 2 C.F.R. Part 200, Appendix II, ¶ D.). Pursuant to and consistent with the Davis-Bacon Act, the following provisions apply:

1. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the U.S. Secretary of Labor. In addition, Contractors must be required to pay wages not less than once a week.
2. The Board has included a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation materials for goods and/or services, which is incorporated by reference into this contract, the award of this contract is conditioned upon acceptance of the wage determination issued by the Department of Labor.
3. The Board shall report all suspected or reported violations to the Federal awarding agency.

B. **Copeland “Anti-Kickback” Act:**

1. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

- IX. Compliance with the Contract Work Hours and Safety Standards Act
- A. **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- C. **Withholding for unpaid wages and liquidated damages.** The Board shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

X. Rights to Inventions Made Under a Contract or Agreement

A. To the extent applicable, if the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the Board wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Board will comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. (See 2 C.F.R. Part 200, Appendix II, ¶ F)

XI. Clean Air Act and the Federal Water Pollution Control Act.

The following provisions apply to contracts of amounts in excess of \$150,000:

A. Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The Contractor agrees to report each violation to the Board and understands and agrees that the Board will, in turn, report each violation as required to assure notification to the State of North Carolina, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

B. Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The Contractor agrees to report each violation to the Board and understands and agrees that the Board will, in turn, report each violation as required to assure notification to the State of North Carolina, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

XII. Suspension and Debarment

A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by the Board. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of North Carolina and/or the Board, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XIII. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(as amended)

A. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification regarding lobbying, which is attached hereto as Exhibit A. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

XIV. Procurement of Recovered Materials.

A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

B. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

XV. Access to Records.

The following access to records requirements apply to this contract:

A. The Contractor agrees to provide the Board, the State of North Carolina, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

XVI. DHS Seal, Logo, and Flags: The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

XVII. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

XVIII. No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

XIX. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

XX. Insurance and Reimbursement

The Contractor shall assist and support the Board in any way during the claim process with its insurance carrier(s) and/or seeking reimbursement for expenses from the State of North Carolina, FEMA or other applicable local, state or federal agency.

XXI. Responsibility

The Contractor shall provide documentation establishing its integrity, compliance with public policy, record of past performance, and financial and technical resources prior to the execution of this contract.

XXII. Compliance with Local Board Policy

The Contractor shall comply with all applicable Pender County Board of Education Policies, including but not limited to, Pender County Schools Federal Uniform Guidance Procurement Policy and Pender County Schools Federal Uniform Guidance Conflict of Interest Policy.

EXHIBIT A, CERTIFICATION REGARDING LOBBYING
(44 C.F.R. PART 18)

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned _____[Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date