

## **STATE OF NORTH CAROLINA**

**NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, OFFICE OF  
RECOVERY AND RESILIENCY (NCORR)**

**REQUEST FOR BID NUMBER #: Rehab - 08**

**WORK ORDERS FOR RESIDENTIAL  
CONSTRUCTION SERVICES**

**Date of Issue: 04/10/2020**

**Request for Bid Opening Date: 04/24/2020**

**At 12:00 PM ET**

**Direct all questions concerning this Request for Bid to:**

Sherri Garte

Director of Procurement and Contracts

Email: [sherri.garte@ncdps.gov](mailto:sherri.garte@ncdps.gov)

Phone: 919-324-6228

**STATE OF NORTH CAROLINA  
NCORR**

Refer **ALL** bid responses regarding this Request for Bids to: [Construction@rebuild.nc.gov](mailto:Construction@rebuild.nc.gov)

RFB #: Rehab - 08  
Description: Rehabilitation Projects

**EXECUTION**

Failure to execute/sign Request for Bid prior to submittal shall render bid invalid and it **WILL BE REJECTED**. Late responses cannot be accepted.

In compliance with this Request for Prequalification, and subject to all the conditions and Attachments A, B, C, D, and E herein, the undersigned Contractor offers and agrees to enter into contracts based upon the prices set opposite each item within the Bid Pricing Book attached to this Request for Bid. By executing this form, the undersigned Contractor certifies that its bid is submitted competitively and without collusion (G.S. 143-54), that none of its 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. Gen. Stat. §143-59.2), and that it is not an ineligible Contractor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this application, the undersigned certifies to the best of Contractor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. 143-48.5, the undersigned Contractor certifies that it, and each of its sub-contractors for any Contract awarded as a result of this Request for Prequalification, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. G.S. Gen. Stat. §133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of any response in this Request for Bid, you attest, for your entire organization and its employees or agents that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

VENDOR: CRSC, LLC		
DUNS NUMBER 017474431		
STREET ADDRESS: 129 Garden Walk Drive	P.O. BOX:	ZIP: 70433
CITY & STATE & ZIP: Covington, LA 70433	TELEPHONE NUMBER: 985-237-5987	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE:		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR: Taylor Brantley, Project Manager	FAX NUMBER: 1-985-326-7450	
VENDOR'S AUTHORIZED SIGNATURE: <i>Taylor C Brantley</i>	DATE: 4/24/2020	EMAIL: t.brantley@crscllc.com

Offer valid for at least 60 days from date of bid opening, unless otherwise stated here: \_\_\_\_\_ days. After this time, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this Request for Bid.

**ACCEPTANCE OF BID**

If any or all parts of this bid are accepted by the State of North Carolina, an authorized representative of NCORR shall affix his/her signature hereto and this document and all provisions of the original RFP #19-RFP-014364-WAX, this Request for Bid, the Vendor response and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s). *This procurement complies with the State's own procurement laws, rules and procedures per 2 CFR § 200.317.*

FOR STATE USE ONLY: Offer accept and Work Order awarded this <u>1<sup>st</sup></u> day of <u>May</u> , 20 <u>20</u> as indicated on the attached certification, by <u><i>Angela Dunaway</i></u> (Authorized Representative of NCORR)
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# M/WBE/HUB UTILIZATION PLAN FOR CONTRACTS FROM RFPQL

**Instructions:** This Utilization Plan must be submitted with any bid/assignment proposal that results in a contract from a Request for Pre-Qualified List (RFPQL) solicitation. The Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE)/ Historically Underutilized Business (HUB) under the contract resulting from a PQL solicitation. Attach additional sheets if necessary.

**PROPOSED CONTRACT DOLLAR VALUE:** \$239,445.60

## VENDOR CONTACT INFORMATION

Company Name: CRSC, LLC

Phone: 985-237-5987

Fax: 1-985-326-7450

Email: t.brantley@crscllc.com

Registered company address: 129 Garden Walk Drive

City: Covington

State: LA

ZIP Code: 70433

## CONFIRMED SUBCONTRACTORS / SUPPLIERS

Certified MWBE Contractor or Supplier (Name, Address, and Phone Number)	Certification (Y/N)	Detailed Description of Work (ATTACH ADDITIONAL SHEETS, IF NECESSARY)	Anticipated Dollar Value of Subcontracts/Supplies/Services
1 JCL Grading 3145 Wellington Road, Lumberton, NC 28360 910-316-4857	NC Certified <input checked="" type="checkbox"/> MBE/HUB <input type="checkbox"/> WBE	All rehabilitation construction	\$ 24,056.73
2	NC Certified <input type="checkbox"/> MBE/HUB <input type="checkbox"/> WBE		\$
3	NC Certified <input type="checkbox"/> MBE/HUB <input type="checkbox"/> WBE		\$

ATTACH GOOD FAITH EFFORTS DOCUMENTATION AS APPLICABLE.

PREPARED BY:

\*FOR AGENCY USE ONLY\*

Name, Title, Signature:

Taylor Brantley, Project Manager,



Reviewed By:

Approved:

- Yes  
 No

Date:

Date:

4/24/2020

## SECTION 3 UTILIZATION PLAN FOR CONTRACTS FROM RFPQL

**Instructions:** This Utilization Plan must be submitted with any bid/assignment proposal that results in a contract from a Request for Pre-Qualified List (RFPQL) solicitation. The Plan must contain a detailed description of the supplies and/or services to be provided by each certified Section 3 Business under the contract resulting from a RFPQL solicitation. Attach additional sheets if necessary.

**PROPOSED CONTRACT DOLLAR VALUE:** \$239,445.60

### VENDOR CONTACT INFORMATION

Company Name: CRSC, LLC

Phone: 985-237-5987

Fax: 1-985-326-7450

Email: t.brantley@crscllc.com

Registered company address: 129 Garden Walk Drive

City: Covington

State: LA

ZIP Code: 70433

### CONFIRMED SUBCONTRACTORS / SUPPLIERS

Certified Section 3 Contractor or Supplier (Name, Address, and Phone Number)	Detailed Description of Work (ATTACH ADDITIONAL SHEETS, IF NECESSARY)	Anticipated Dollar Value of Subcontracts/Supplies/Services
1 Nash Locklear Construction Company, Inc. 1313 West Carthage Road, Lumberton, NC 28358 910-734-7128	All rehabilitation construction	\$ 28,482.38
2		\$
3		\$

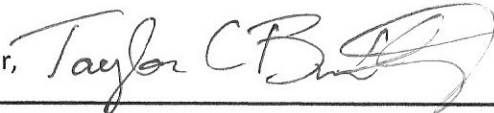
ATTACH "GREATEST EXTENT FEASIBLE" DOCUMENTATION AS APPLICABLE.

PREPARED BY:

\*FOR AGENCY USE ONLY\*

Name, Title, Signature:

Taylor Brantley, Project Manager,



Reviewed By:

Approved:

- Yes  
 No

Date:

Date: 4/24/2020

**Non-Collusion Affidavit**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

[3] No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of North Carolina, this <sup>rd</sup> day of <sup>rd</sup> April, 2020 as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES                      LEGAL RESIDENCE

_____	_____
President	
_____	_____
Secretary	
_____	_____
Treasurer	
_____	_____
President	
_____	_____
Secretary	

Treasurer

Identifying Data:

Potential Contractor: CRSC, LLC

Street Address: 129 GARDEN WALK DR.

City, Town, etc. COVINGTON, LA 70433

Telephone: 5042350360 Title: PRESIDENT

  
If applicable, Responsible Corporate Officer Name

\_\_\_\_\_

Title

\_\_\_\_\_

Signature

Joint or combined bids by companies or firms must be certified on behalf of each participant:

Legal name of person, firm or corporation      Legal name of person, firm or corporation

By \_\_\_\_\_      By \_\_\_\_\_

(Name)      (Name)

\_\_\_\_\_

Title

\_\_\_\_\_

Street Address

Street Address

\_\_\_\_\_

City and State

City and State

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## 1.0 PURPOSE AND BACKGROUND

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Vendors have been approved to perform work on Housing Recovery Program (HRP) projects pursuant to 19-RFP-014914-GSX (RFPQ). The North Carolina Department of Public Safety, Office of Recovery and Resiliency (NCORR) is seeking bids from those prequalified Vendors to provide services as described in the attached Scopes of work in this Request for Bid (RFB).

Bids shall be submitted in accordance with the terms and conditions of this RFB and any addenda issued hereto.

## 2.0 GENERAL INFORMATION

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### 2.1 REQUEST FOR BID DOCUMENT

This RFB is comprised of the base document, any attachments, and any addenda released before RFB award. All attachments and addenda released for this RFB in advance of any award are incorporated herein by reference. Vendor shall attach its response to this RFB for submission; however, any and all additional, modified or conflicting terms and conditions submitted on or with Vendor's bid shall be disregarded and shall not be considered a part of any Work Order arising from this RFB. Any attempt to delete or avoid the force of the previous sentence shall render Vendor's bid invalid and non-responsive, and it shall not be considered.

### 2.2 SUBMISSION INSTRUCTIONS

**Instructions:** A RFB, subject to the terms and conditions of RFPQ and any conditions made a part hereof and the receipt requirements described below, shall be received at the email address indicated below for furnishing and delivering services as described herein.

[Construction@ReBuild.NC.gov](mailto:Construction@ReBuild.NC.gov)

Vendor shall submit one **(1) signed, original executed** response to the email address identified above. Vendor shall insert the bid number in the subject line of the email with the Vendor's name and date and time of opening in the body of the email. Vendor shall also name **Vendor's contract manager (see Section 4.5) in the body of the email with contact information (phone number and email address).**

**IMPORTANT NOTE:** It is the responsibility of the Vendor to have the signed RFB in this email account by the specified time and date of opening. This is an absolute requirement. The time of delivery will be marked on each RFB when received, and any response received after the submission deadline will not be accepted or evaluated. Any changes to the RFB and a summary of all questions submitted and answers will be emailed to Vendor as an Addendum.

**It is the Contractor's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.**

### 2.3 QUESTIONS ABOUT REQUEST FOR BID

**Purpose:** Upon review of the RFB, Vendors may have questions to clarify or interpret the RFB in order to submit the best response possible. To accommodate the Questions process, Vendors shall submit any such questions by the below due date.

**Instructions:** Written questions shall be emailed to [sherri.garte@rebuild.nc.gov](mailto:sherri.garte@rebuild.nc.gov) no later than 2:00 pm April 15, 2020 Vendor should enter “RFB # Rehab - 08 – Questions” as the subject for the email. Questions submittals should include a reference to the applicable RFB section and be submitted in a format shown below:

Reference	Vendor Question
RFB, Page Number	Vendor question...?

Questions received prior to the submission deadline date, the State’s response, and any additional terms deemed necessary by the State will be provided in the form of an addendum, and will be emailed to all Vendors that received an RFB by email and shall become an Addendum to this RFB. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this RFB, shall be considered authoritative or binding. Vendors shall be entitled to rely *only* on written material contained in the RFB and any Addendum.

**2.4 REQUEST FOR BID CONTENTS**

Vendor shall populate all attachments of this RFB that require the Vendor to provide information and include an authorized signature where requested, as outlined below. Vendor Responses shall include the following items and they should be arranged in the following order:

- a) Completed and signed version of EXECUTION PAGE and signed receipt pages of any addenda released in conjunction with this RFB.
- b) Completed version of ATTACHMENT A: Bid Worksheet (Document attached in email)
- c) Attachment B: Instructions to Contractors
- d) Attachment C: North Carolina General Terms and Conditions
- e) Attachment D: Construction General Terms
- f) Attachment E: Federal Contract Terms and Requirements

**2.5 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS**

- a) **ADA:** American with Disabilities Act of 1990
- b) **ASTM:** American Society of Testing and Materials
- c) **BATCH:** A grouping of similar Work Orders/Scopes of Work grouped together.
- d) **CDBG-DR:** Community Development Block Grant – Disaster Recovery Program
- e) **CONTRACTOR (GC):** A North Carolina licensed General Contractor prequalified pursuant to 19-RFP-014914-GSX.
- f) **ECR:** Estimated Cost of Repair
- g) **HUD:** The United States Department of Housing and Urban Development
- h) **HRP:** Housing Recovery Program
- i) **NCORR:** The North Carolina Department of Public Safety, Office of Recovery and Resiliency.

- j) **NOTICE TO PROCEED:** Notice to Vendor to commence work to be performed under this agreement.
- k) **PRINCIPLE PLACE OF BUSINESS:** That principle place from which the overall trade or business of the Vendor is directed or managed.
- l) **RFB:** Request for Bid
- m) **RFPQ:** Request for Prequalification 19-RFP-014914-GSX
- n) **SHPO:** State Historic Preservation Office
- o) **WORK ORDER (WO):** Specific, written authorization to perform the task(s) listed therein.
- p) **VENDOR:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Request for Bid.

### **3.0 METHOD OF AWARD AND EVALUATION PROCESS**

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#### **3.1 METHOD OF AWARD**

The RFB will be awarded in accordance with State and Federal law and the evaluation criteria set out in this solicitation. Prospective Vendors shall not be discriminated against on the basis of any prohibited grounds as defined by Federal and State law.

NCORR may obtain bids from one or more potential Vendors. All bids will be evaluated and award will be made based on the lowest responsive, responsible bid meeting specifications.

#### **3.2 REQUEST FOR BID EVALUATION PROCESS**

- a) The State shall review the responses to this RFB to confirm that they meet the specifications and requirements. The State reserves the right to waive any minor informality or technicality.
- b) For all responses that pass the initial review process, the State will review and assess Vendors' pricing. The State may request additional formal responses or submissions from any or all Vendors for the purpose of clarification or to amplify the materials presented in the RFB. Vendors are cautioned, however, that the State is not required to request clarification, and often does not. Therefore, all responses should be complete and reflect the most favorable terms available from Vendor. Prices cannot be altered or modified as part of a clarification.
- c) The State reserves the right to contact references as well as any other known sources to verify Vendor's past performance. This information may be considered in making an award.
- d) Vendors are cautioned that this is a request for bid, not a request or an offer to contract, and the State reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the State.

**3.3 CONFIDENTIALITY DURING PROCESS:** During the evaluation period and prior to award, all information concerning the responses and evaluation is confidential, and possession of the responses and accompanying information is limited to personnel of the issuing agency and any third parties involved in this procurement process, and to the committee responsible for participating in the evaluation. Any attempt on behalf of Vendor to gain such confidential information, or to influence the evaluation process (e.g., contact anyone involved in the evaluation, criticize another Vendor, offer any benefit or information not contained in the bid) in any way is a violation of North Carolina purchasing law and regulations and shall constitute

sufficient grounds for disqualification of Vendor's offer from further evaluation or consideration in the discretion of the State (NCAC 05B. 0103).

### 3.4 NOTICE TO VENDORS REGARDING TERMS AND CONDITIONS

It shall be Vendor's responsibility to read the Instructions, the State's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP, and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFB.

If Vendors have questions, issues, or exceptions regarding any term, condition, instruction or other component within this RFB, those shall be submitted as questions to the Agency pursuant to Section 2.3 of this RFB. If the State determines that any changes will be made as a result of the points raised, then such decisions will be communicated in the form of an addendum. Other than through this process, and subject to the provisions of section 2.3, the State rejects and shall not be required to evaluate or consider any additional or modified terms and conditions or Instructions to Vendor submitted with Vendor's proposal. This applies to any language appearing in or attached to the RFB as part of the Vendor's proposal that purports to vary any terms and conditions or HUD rules, requirements, standards, HRP requirements and/or the State's instructions herein or to render the RFB as non-binding or subject to further negotiation. Vendor's proposal shall constitute a firm offer to perform HRP contracts assigned or awarded to Vendor after competitive bidding. **By execution and delivery of a response to this RFB, Vendor agrees that any additional or modified terms and conditions, including Instructions to Vendors, whether submitted purposely or inadvertently, or any purported condition to the offer shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's Proposal.**

### 3.5 INTERPRETATION OF TERMS AND PHRASES

This RFB serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the State; and (2) to provide (together with other specified documents) the terms of the Work Orders resulting from this procurement. As such, all terms in the original RFP #19-RFP-014914-GSX, its addenda and the RFB shall be enforceable in accordance with the General Contract Terms and Conditions. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable conditions. In determining whether bids should be evaluated or rejected, the State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the State's needs as described in the RFB. However, failure to comply with any single requirement may result in the State exercising its discretion to reject a bid in its entirety.

## 4.0 REQUIREMENTS

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This Section lists the requirements related to this RFB. By submitting a response, the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this RFB. If the Vendor is unclear or has any question about the specifications, requirements or terms and conditions herein, it is urged and cautioned to contact the issuing agency Contract Lead as specified in this Request.

#### **4.1 APPROVED PRICING CHARGES AND COSTS**

Construction Costs: Contractors will have to agree to pricing, which is different depending upon the batch awarded. For projects \$30,000 and above, Contractors shall (1) use the Bid Book pricing for materials (2) while proposing pricing for appropriate items of the Bid Book which lack values and (3) giving profit and overhead percentages. The Bid Book will be reevaluated by NCORR to assess changes in construction costs prior to re-opening the prequalification pool. Any changes to Bid Book prices will be used for future bids and will not be retroactive for projects which already have signed Notices to Proceed. For projects under \$30,000, composite pricing will be set by the CM, in conjunction with NCORR, after asking for a bid factor, overhead percentage, and profit percentage from all Contractors who wish to participate in the rehabilitation projects under \$30,000. The GCs will then either accept or reject composite pricing and that pricing will be applied to all projects below \$30,000.00. GCs who do not accept the composite pricing will not be awarded contracts below \$30,000.00.

Sales Taxes: The completed NCORR Benchmark Bid Book may not contain all applicable sales taxes, and approved contractors may invoice or charge to NCORR for reimbursement of applicable sales taxes. If the approved contractor does invoice and charge sales taxes, NCORR may require receipts or documentation to review and process invoices or payment requests.

#### **4.2 WORK ORDER TERM**

Each Work Order shall have an initial term of 45 Days after Notice to Proceed.

At the end of the Work Order's current term, the State shall have the option, in its sole discretion, to extend the Work Order on the same terms and conditions. The State will give Vendor written notice of its intent whether to exercise each option no later than **10** days before the end of the Work Order's then-current term.

#### **4.3 PRICING**

This RFB will require Vendor to provide the same bid factor to be applied to the ECR for all Rehabilitation projects. **For reconstruction, elevation, and MHU replacement projects, the GC will submit their best price per square foot for each project.** Vendor will submit a lump sum fixed price for each project site that will include profit and overhead for all demolition projects. Any costs not reflected in the Work Order will be paid out according to an authorized change order after showing documentation that additional costs are required by the Authority Having Jurisdiction. Change order pricing shall be negotiated between Vendor and NCORR.

Price shall constitute the total cost to the State for all deliverables required in each Work Order. Vendor shall not invoice for any amounts not specifically allowed for in this Work Order Batch per ATTACHMENT A: Bid Worksheet (Attached in email) and included with Vendor's bid. Vendor shall submit bids for any and all projects in this RFB.

#### **4.4 INVOICES**

Vendor shall provide an invoice to the NCORR Construction Manager. The standard format for invoicing shall be Single Invoices meaning Vendor shall provide the Construction Manager with an invoice for each Work Order. Vendor will submit a separate invoice per application number. Invoices shall include detailed information, supporting documentation and/or

The deliverables requested in a Work Order to allow NCORR or its designee to verify fees, costs and/or expenses.

At a minimum, the following fields shall be included on all invoices: Contractor's Billing Address, Customer Account Number, NC Contract Number, Work Order Date and back up documentation.

#### **4.5 CONTRACT MANAGER AND CUSTOMER SERVICE**

Vendor shall designate and make available to the State a contract manager. The contract manager shall be the State's point of contact for contract related issues and issues concerning performance, progress review, scheduling and service.

#### **4.6 SCOPE OF SERVICES**

NCORR is seeking to procure the services of construction Contractors to perform, or cause to be performed, rehabilitation, reconstruction, manufactured housing unit replacement, demolition and/or elevation of eligible structures in compliance with local, Federal, and State statutory requirements for grants.

NCORR has prequalified General Contractors based on work/project capacity; construction experience; experience with lead, asbestos and environmental abatements; Bid Book Pricing and such other considerations that may be identified in grant eligibility determinations and CDBG-DR rules/standards and/or NCORR best practices and/or financial controls. NCORR shall award HRP projects in a process that is in the best interest of the HRP and/or specific areas or communities. NCORR has developed a policy/procedure to fairly award HRP construction projects.

Additionally, GC(s) must demonstrate the ability to mobilize within 20 days of award (which shall include obtaining homeowner approval of construction documents and consent to perform the work, design, permitting, surveying, temporary utilities, etc.) and complete construction projects within the contracted time (subject to environmental remediation, construction in most cases should not to exceed 45 days for rehabilitation, 20 days for demolition, 135 days for rehabilitation with elevation, 108 days for reconstruction, 135 for reconstruction with elevation, 30 days for MHU repairs, 120 for MHU replacements, 135 MHU replacements plus elevation to reduce potential hazards to public welfare and safety.

Contractor(s) will be bound to specific terms and conditions which are subject to change prior to the execution of any contract that may result from this Solicitation (Attachment D). However, it is the intent and goal of NCORR and the State of North Carolina to make every HRP home project successful, so Contractors are encouraged to work proactively with NCORR, its construction manager(s) and grant eligibility contractor(s) to identify and resolve all issues and problems immediately to minimize delays in completing HRP projects.

#### **4.7 DESCRIPTION OF SERVICES AND REQUIREMENTS**

Contractors must be familiar with North Carolina, local, and/or regional Housing Guidelines, if applicable. Each local/regional program will be nuanced depending on local construction requirements, community recovery needs, program goals, and other applicable locally approved program requirements.

Separately, NCORR will also retain a design firm to develop sample floor plans for 2-bedroom, 3-bedroom, 4-bedroom and such other home floor plans and elevations that homeowners may select for reconstruction, which will comply with CDBG-DR resilient construction standards and North Carolina State Building Code. GC shall use provided plans for this program.

NCORR's focus is on customer service for the citizens participating in the program, as well as, compliance with all applicable guidelines and regulations.

##### **a) HUD Housing Quality Standards (HQS) and Green Building Retrofit**

The State's commitment is to provide safe, sanitary and secure housing to eligible program participants. HUD has established standards for housing quality and green retrofit.

b) **Americans with Disabilities Act of 1990 requirements**

HUD has established standards of compliance that must be followed by every GC on every project where it is mandatory. In addition, GCs will have to adhere to all local, state, and federal rules and regulations.

c) **Customer Service**

All participants shall be treated with dignity and respect. The State expects responsiveness to the State and the homeowner, first-class customer service, and interactions and communications that are easily understood, prompt, and courteous.

#### **4.8 DEMOLITION SCOPE OF WORK**

The scope of work for each structure will vary, but may include, although not be limited to, the following:

- a) Obtaining all necessary state and local permits and approvals prior to commencement of the work for each structure;
- b) Removal of any above and/or in-ground oil tanks identified at the project site. The scope of work for this activity includes but is not limited to any permitting requirements, removal, cleaning, and disposal of tank, including all the tank contents, and remediation of any stained soils or surfaces;
- c) Marking and identification of all utilities passing through the area; prepare the property prior to commencement of structure demolition;
- d) Identify, remove and properly dispose of all universal and household hazardous wastes remaining in the structures;
- e) Perform baiting;
- f) Provide protection of adjacent properties and pedestrians, where applicable;
- g) Prepare the property prior to commencement of structure demolition to include but are not limited to:
  - o erecting orange hi-viz safety fence around structures to be demolished;
  - o establishing silt fence and erosion control barriers as well as covering and protecting storm drains to prevent debris and soil run-off;
  - o placing 6 to 8 ft. chain-link fence panels across the front of the property to aid in site control;
  - o erecting any signage required by local, State, and Federal regulations.
- h) Erosion control measures must be maintained in proper condition at all times and expanded when necessary to cover any additional downslope areas that may be disturbed during the demolition and restoration processes. These measures must be installed and maintained prior to the areas being disturbed, and include measures to prevent offsite migration of soil and silt from soil piles. These erosion control measures must remain in place, and be maintained in good working condition, until all backfill and restoration tasks have been completed including seeding and re-vegetation of the property;
- i) Submit a Hazardous Material Handling and Disposal Plan to the CM describing the methods to be employed during the inventory, identification, packaging, and offsite disposal of universal and household hazardous wastes that may be encountered during pre-demolition preparation of the housing units. Plans must be submitted within fifteen (15) days of the signing event;

- j) Verify that each house listed for demolition has been abated (if applicable), that the house they are about to demolish is the correct house, and that all activities identified by their pre-demolition survey have been conducted and the house cleared for demolition, and proper permits acquired, before commencing demolition. Asbestos Containing Material (ACM) survey reports will be available for each property where ACM has been identified. Unless identified at property during demolition operations, asbestos abatement will be completed by separate contractor prior to GC receiving control of the property. If ACM is discovered at a project site, NCORR shall be notified immediately and all work shall be stopped until the suspect materials can be sampled and analyzed. If materials come back positive for ACM, abatement must occur prior to any demolition work continuing at project site;
- k) Full demolition, including removal of slabs, foundations, and basements with the end goal being an empty lot devoid of any items except for pre-existing vegetation, trees, and shrubbery;
- l) Where driveways cross sidewalks, if existing joints are not present, the sidewalk/drive must be scored so that the driveway can be removed without damaging the sidewalk. Sidewalks and curbs are to remain intact and undamaged by demolition activities;
- m) All sub-surface holes (such as low areas under removed building foundations and basements, or holes created by the removal of basements and in-ground pools) will be backfilled, compacted and graded utilizing certified clean fill that meets the analytical requirements of the State of North Carolina for unrestricted, residential use. The backfill source must be identified prior to commencing demolition, and certification of the fill, and any analysis performed to verify the fill is clean, must be submitted for approval before material is brought on site. Backfill of basements or deep sub-surface areas will be compacted in minimum one foot increments unless more stringent requirements are provided for under local regulations;
- n) The area affected by demolition operations shall be cleared of all debris, backfilled, and graded, and the area covered with a layer of topsoil and seeded utilizing a seed mix suitable for the area where the work has taken place;
- o) Backfill specifications shall be per any local municipal, County, and State of North Carolina rules and regulations governing that type of activity or per requirements under local building codes, however the fill must consist of clean sand, gravel, or soil. No asphalt, slag, fly-ash, broken concrete, demolition debris, or similar materials shall be permitted for backfill use;
- p) Maintain the property and perform watering of the seed until a thick vegetative cover is established. Once the vegetation has been re-established and NCORR determines demolition work has been completed, the Contractor shall remove the site security measures, taking care not to disturb vegetation in the process;
- q) Provide photo documentation of the entire demolition process to include pictures of the structure prior to demolition; photos of pre-demolition preparations to include locating and disconnect of utilities; pre-demolition securing of the property; bracing and shoring (if applicable); erosion control measures; protection of adjacent properties; removal of universal waste and household hazardous waste; baiting; demolition of the structure; backfill, grading and compaction of subsurface areas; and the topsoil, seeding, and final restoration of the property. Pre-demolition photo-documentation shall also show any appreciable drop in elevation from the front to the back of the various properties to aid in proper grading and restoration efforts. Backfill and restoration activities may require erection of additional silt fence



and erosion control barriers until re-vegetation of the property has occurred. The pre-demolition inspection shall include photo documentation of the interior as well as the exterior of the structure to establish that all universal and household hazardous wastes have been removed and proof that all storm drains in the vicinity of the demolition work have been adequately protected to prevent intrusion of silt and debris;

- r) Perform perimeter and personnel air monitoring during demolition of the structures. At a minimum perimeter air monitoring shall include total particulates / dust and must be continuous during demolition operations. Personnel air monitoring should address both dust and lead. The frequency of air monitoring and the types of monitoring instruments to be employed must be addressed in the Contractor's Site-Specific Health and Safety Plan (HASP).

#### **4.9 REHABILITATION SCOPE OF WORK**

It is anticipated that homes eligible for rehabilitation will require an array of repairs ranging from minor to major. The scope of work for each repaired structure will vary, but may include, although not be limited to:

- a) Obtaining all necessary state and local permits and approvals prior to commencement of the work for each structure;
- b) Providing architectural and house plan renderings;
- c) Demolition of damaged interior and exterior materials;
- d) Foundation leveling, repair, excavation and/or elevation;
- e) Structural damage repair;
- f) Building envelope repair, including:
  - o Roof repair or replacement and attendant damage, including shingles, gutters, and shutters,
  - o Door and window replacement/repair, or removal,
  - o Siding /veneer repair or replacement, or removal,
  - o Mechanical (HVAC), replacement of electrical (including panels) and plumbing systems repair, reconfigure, and replacement,
  - o Removal of in-ground/above ground storage tanks and/or repairing of septic systems, where applicable,
  - o Drywall repair or replacement,
  - o Rough and trim carpentry;
- g) Surface preparation and painting;
- h) Flooring repair, replacement/removal;
- i) Cabinet and appliance repair or replacement;
- j) Lead-based paint, asbestos and other environmental abatement;
- k) Specialty construction elements associated with historic properties, including coordination with the North Carolina Historical Commission or State Historic Preservation Office (SHPO), as well as other local historic districts and stakeholders in other jurisdictions;
- l) Wind mitigation and retrofitting measures;

- m) Specialty construction elements associated with Green Building Construction techniques (as required by HUD);
- n) Accessibility and design of projects to comply with the American with Disabilities Act of 1990 (if applicable) unless a HUD exception applies;
- o) Conducting close-outs for each project, which may include obtaining certificate(s) of occupancy from applicable state and local authorities; and
- p) Survey/elevation certificate requirements.

#### **4.10 RECONSTRUCTION SCOPE OF WORK**

In certain cases, a property owner may only be eligible for the complete reconstruction of his/her home, either substantially within the same footprint as the prior home (reconstruction). The scope of work for each reconstructed structure will vary but may include, although not be limited to:

- a) Coordination with the property owner and his/her family from issuance of a work order to obtaining a certificate of occupancy for closing;
- b) Utility disconnection and deactivation/reconnection and reactivation;
- c) Demolition of existing structure;
- d) Debris removal in accordance with all federal, state and local requirements, including all abatement needs;
- e) Providing architectural and house plan renderings, as well as engineering and architectural services;
- f) Site preparation including fencing removal and replacement;
- g) Construction of new residential structures including 2, 3, and 4-bedroom floor plans in accordance with all applicable local and state, federal, and ICC codes and standards;
- h) Accessibility and design of projects to comply with the American with Disabilities Act of 1990 (if applicable) unless a HUD exception applies;
- i) GC should be prepared to assess abatement needs and do any required abatement on existing structures on the project. GC will work with CM on any demolition abatement work to assess whether full structure should be demolished pursuant to hazardous waste requirements or if only certain sections of the demolished structure should follow hazardous waste requirements and needed by availability in hazardous waste;
- j) Survey/elevation certificate requirements;
- k) Lead, asbestos, radon, and other environmental services, where applicable; and

#### **4.11 MHU REPLACEMENT SCOPE OF WORK**

Services provided include replacement of MHUs including units meeting ADA compliance requirements. Replacement will be done when the Scope of Work on a MHU exceeds the rehabilitation cap for the Program. The scope of work for each replaced structure will vary and may include, although not limited to, the following:

- a) Procurement of a new program-compliant MHU;
- b) POD management;
- c) Move out coordination with the property owner;
- d) Utility disconnection and deactivation/ reactivation and reconnection;
- e) Demolition of existing structure;
- f) Americans with Disabilities Act (ADA) compliance, where required;
- g) Servicing or repairing Wells, Septic systems, and in ground/above ground storage tanks;
- h) Site/foundation preparation;
- i) Debris removal in accordance with all Federal, State and local requirements, including the disposal of potential asbestos containing materials;
- j) Site preparation;
- k) Replacement and installation of MHU in accordance with all applicable local and state, federal, and ICC codes and standards;
- l) Lead, asbestos, radon, and other environmental services, where applicable;
- m) Survey/Elevation certificate requirements;
- n) Engineering and architectural services; and
- o) Fencing removal and replacement.

#### **4.12 ELEVATION/MITIGATION SCOPE OF WORK**

##### **Elevation Process**

Each structure elevation shall consist of steps to produce the construction documents for the local authority having jurisdiction approval. These steps will require multiple site visits by various professionals to develop the necessary documents needed for complete construction documents. GC and Professional Engineer/Registered Architect (PE/RA) shall schedule or provide services as follows:

- a) Site Survey. All homes that are deemed to need elevation will require a land survey and elevation certificate. The site survey shall be scheduled by GC to visit the home to conduct a survey. The survey shall include property lines, existing setback measurements, the footprint of existing home, elevation heights, and grade heights. When the survey has been completed, a copy of the land survey shall be submitted to the PE/RA for review then submitted to the authority having jurisdiction.
- b) Geotechnical Soil Borings. Geotechnical soil borings will be needed for clarification on soil types at properties where home elevation is required. The GC will endeavor to schedule the land survey visit at the same time as the geotechnical soil boring visit, so as to lessen timeframes and inconvenience for the homeowner. Two soil borings are required per property and test results shall be submitted to the PE/RA office for review. The PE/RA could deem the soil test is not required if testing results are already supplied for adjacent homes, this will be the decision of the PE/RA who will then notify the GC.
- c) Architectural Consultation Process. Homeowner will review pre-developed design concepts of the PE/RA and, at the time homeowner agrees to the elevation process, the PE/RA will conduct a survey of

pre-existing conditions. When the consultation is completed the PE/RA can proceed with completing the construction documents for the GC.

- d) Homeowner Construction Document Presentation. Once the construction documents are completed by the PE/RA, and approved and signed by the homeowner, a new permit shall be secured by the GC and construction may begin.
- e) Required permits and certificates.
- f) Disconnecting & deactivation of utilities.
- g) Extending/reconfiguring utilities to be reconnected/reactivated.
- h) Elevation of decks/porches to meet code compliance.
- i) ADA Compliance to include, although not limited to, ramps and lifts where required.
- j) MEP drawings for modifications to existing mechanical, electrical, and plumbing systems where required.
- k) Miscellaneous repairs/rehabilitations due to elevation.

#### **4.13 ADDITIONAL REQUIREMENTS**

- a) Provide professional labor, equipment, and materials adequate to perform the work in accordance with the scope of work issued for each eligible applicant's residential structure while ensuring that all applicable housing standards and codes are met;
- b) Comply with all applicable local, state, and federal laws, regulations, and guidelines, which may include: HUD Community Development Block Grant disaster laws, regulations, and guidelines; the Davis Bacon Act (for repairs to properties containing eight (8) units or more); and Section 3 of the Housing and Urban Development Act of 1968;
- c) Mobilize in the awarded Zone(s) within 20 days from the execution of a Work Order;
- d) Provide documentation and tracking of construction progress;
- e) Meet with individual property owners to review the scope of work to be performed, including establishing a work schedule acceptable to property owners and reviewing work upon final inspection;
- f) Meet NCORR's 45 days for rehabilitation, 20 days for demolition, 135 days for rehabilitation with elevation, 108 days for reconstruction, 135 for reconstruction with elevation, 30 days for MHU repairs, 120 for MHU replacements, 135 MHU replacements plus elevation work completion requirements for the HRP Project from the Notice to Proceed (NTP), homeowner consent/contract execution and/or permitting, whichever is later, and subject to environmental abatements that may impact a Contractor's schedule;
- g) Meet all federal, state, and local requirements for the transport and disposal of municipal solid, industrial, hazardous, and other wastes from demolished structures; and
- h) Provide a one-year warranty, and a third-party ten-year structural warranty.
- i) Assist homeowners in vacating their damaged home, if necessary. Moving services will primarily be authorized to support the elderly and disabled homeowners, and NCORR will coordinate with the approved contractors to minimize risk in the administration of these services.
- j) To ensure homeowners are not out of their homes longer than necessary the State has established standards for timely completion of contracted work. Completion standards begin the day the State issues Vendor a NTP and ends when home passes final inspection and the homeowner accepts key

turnover. The State assesses liquidated damages of one hundred dollars (\$100) a day for each day that exceeds 37 days from NTP to construction passing final inspection and homeowner accepting keys.

k) Vendor shall also complete (IF APPLICABLE):

- i. Utility disconnection and deactivation;
- ii. Demolition of existing structure;
- iii. Servicing or repairing wells, in-ground/above ground storage tanks, and septic systems;
- iv. Debris removal in accordance with Federal, State and local requirements; including the disposal of potential asbestos containing materials; and
- v. Site and foundation preparation.

l) Vendor shall perform residential asbestos and lead remediation services via third party if discovered during construction or if provided in this solicitation. Vendor shall comply with all federal EPA and OSHA regulations, as well as all applicable North Carolina Department Asbestos and lead Rules and Regulations for asbestos and lead abatement projects and/or certificates to ensure jurisdictional compliance and project closeout.

m) Vendor shall provide Project Specific Site Health and Safety Plan (HASP) shall be submitted within 15 days of NTP and prior to any work beginning for each project.

n) Vendor shall comply with any Federal, North Carolina State, and local regulations governing work adjacent to wetlands including but not limited to requirements of the North Carolina Department of Environmental Quality (DEQ) provided to you with this RFB. Pricing shall include compliance with environmental (wetland, etc.) permit requirements.

## 5.0 WORK ORDER

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### 5.1 WORK ORDER SPECIFICATIONS

Projects:

App ID	Address	City	County
APP-03994		Clarkton	Bladen
APP-03280		Clarkton	Bladen
APP-03481		Bladenboro	Bladen
APP-04285		Ivanhoe	Bladen
APP-04713		Chadbourn	Columbus
APP-04683		Riegelwood	Columbus
APP-03125		Fair Bluff	Columbus
APP-02941		Fair Bluff	Columbus
APP-03266		Clarkton	Columbus
APP-01012		Roseboro	Cumberland
APP-04681		Fayetteville	Cumberland

APP-01196		Fayetteville	Cumberland
APP-03013		Fayetteville	Cumberland
APP-02575		Lumberton	Robeson
APP-04647		Fairmont	Robeson

## 5.2 VENDOR'S REPRESENTATION

- a) Vendor warrants that qualified personnel shall provide all services that may be required under the Work Order in a professional manner. "Professional manner" means that the personnel performing the services shall possess the skill and competence consistent with at least the prevailing business standards in the industry. Vendor agrees that it shall not enter any agreement with a third party that may abridge any rights of the State under the Contract. Vendor shall serve as the prime contractor under the Work Order and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. Names of any third-party vendors or subcontractors of Vendor may appear for purposes of convenience in Work Order documents; and shall not limit Vendor's obligations hereunder.
- b) If any goods, services, functions, or responsibilities not specifically described in the Work Order are required for Vendor's proper performance, provision and delivery of the goods and services under The Work Order, or are an inherent part of or necessary sub-requirement included within such goods and services, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the goods and services.
- c) Vendor warrants that it has the financial capacity to perform and to continue performing its obligations under the contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Work Order; and that entering into the Work Order is not prohibited by any contract, or an order by any court of competent jurisdiction.
- d) Compliance with the Copeland "Anti-Kickback" Act
  - i. Vendor. Vendor 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.
  - ii. Subcontracts. Vendor or subcontractor shall insert in any subcontracts the clause above and such other clauses as HUD may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The GC shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
  - iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for a debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

- e) Vendor has read and understands the requirements imposed upon general contractors in the Action Plan and Housing Manual, which can be found on NCORR's website, [www.rebuild.nc.gov](http://www.rebuild.nc.gov)
- f) Vendor hereby agrees that all Attachments to this RFB shall be binding and included as contractual commitments.

### **5.3 WORK ORDER AUTHORIZATION AND COMPENSATION**

During the term of any contract awarded under this RFB, NCORR may request Contractor to perform certain projects as described above, subject to specific work authorization in the form of a Work Order. All Work Orders shall be in writing, signed by both the Contractor and NCORR (or its designee), and shall include a scope of services, a list of tasks to be performed by Contractor, a time schedule, a list of deliverables if any, and such other information or special conditions as may be necessary for the work requested.

There will be three different methods of awarding construction contracts, further defined below:

1. Contracts up to \$29,999.99 will be awarded via assignment to a contractor pursuant to N.C.G.S. § 143-131.
2. Contracts between \$30,000.00 and \$499,999.99 will be awarded via informal bidding pursuant to N.C.G.S. § 143-131.
3. Contracts at or above \$500,000.00 will be awarded via formal bidding pursuant to N.C.G.S. § 143-129.

#### **Awarding of Projects Below \$30,000.00**

As defined in N.C.G.S. § 143-131, contracts under \$30,000.00 do not require competitive bidding or award to the lowest, responsive, responsible bidder. These contracts will be awarded with a bid factor that will be applied to the ECR. The bid factor will be set by the CM, in conjunction with NCORR, that will include overhead and profit for rehabilitation projects under \$30,000.00. The GCs will then either accept or reject the bid factor. Prequalified GCs who do not accept the bid factor will not be awarded contracts under \$30,000.00.

These projects shall be initially awarded to GCs in order of prequalification score from highest to lowest. The CM will use a performance scoring matrix to rank all prequalified GCs on projects under \$30,000. The inputs for the performance matrix will be given to GCs so that they understand what their performance score will be based upon. Once there is enough data in the performance matrix to ensure reliability, then awarding of contracts under \$30,000.00 will be done according to performance ranking and capacity.

#### **Informal Bids for Projects Between \$30,000.00 and \$499,999.99**

For contracts between \$30,000.00 and \$499,999.99, N.C.G.S. § 143-131 requires competitive bidding and awarding of the contract to the lowest, responsive, responsible bidder. For all of these contracts, NCORR requires additional contractual requirements of N.C.G.S. § 143-128, even if they fall under an exception. The CM will assist NCORR with putting together informal Requests for Bids (RFB). These bids will be batched by geographical location and have a similar project type. Those bids will be disseminated in a RFB with the Salesforce Application Numbers for those projects. The GCs shall bid on all projects within the RFB in order to be considered for award. They will submit a bid factor that will include profit and overhead for all rehabilitation projects. They will submit a lump sum fixed price for each project site that will include profit and overhead for all demolition projects. GCs will also submit a price per square for all MHU & elevation projects, reconstruction & elevation projects, and rehabilitation & elevation projects. In order for the GC to win a bid, they shall provide pricing for all projects within the RFB.

The RFBs will be sent to the email address of record for the prequalified GCs and it will include a date and time for the completed RFB to be sent back to NCORR at the same email address which it was sent from.

Any additional costs which arise as a change order will be negotiated between the GC and NCORR. The bid book supplied by NCORR is very comprehensive. All scopes of work shall be aligned with pricing within the bid book. These change orders will have to be approved by the CM and/or be required by the Authority Having Jurisdiction. GC shall provide the CM with documentation of these required changes.

MHU replacements shall be turnkey projects. If the MHU manufacturer requires certification of the GC to ensure warranty transfer to the homeowner, then the GC shall show proof of that certification.

**Formal Sealed Bids for Batches of Projects above \$499,999.99**

Construction contracts at or above \$500,000.00 will need to go through the formal sealed bid process pursuant to N.C.G.S. § 143-129. These contracts will require the additional contractual requirements of N.C.G.S. § 143-128. These contracts will be assembled into batches by the CM and NCORR to allow for the most efficient delivery of construction services for NCORR and the GCs. RFBs for these sealed bids will be substantially the same as the RFBs in the informal bidding process. The bids will be sent to the email address of record for each GC. The GCs must return their completed RFBs in a sealed envelope to an identified location by the date and time requested in the email sent out by NCORR. NCORR will open the RFBs in public, as required by state law, and inform the GCs of the date and time upon which NCORR will award the projects.

GC and Construction Manager will agree upon cost benchmarks for payment before construction begins which will constitute the draw payment schedule.

See Section 4.1 on Pricing for information on pricing and allowable costs.

**ATTACHMENT A: Bid Worksheet**

(Document attached in email)



**ATTACHMENT B: INSTRUCTIONS TO CONTRACTORS**

1. **READ, REVIEW AND COMPLY:** It shall be the Contractor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Contractors or elsewhere in this RFP document.
2. **LATE APPLICATIONS:** Not applicable; prequalification process shall be open to the date specified.
3. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all applications, to waive any informality in applications and, unless otherwise specified by the Contractor, to accept any item in the application.
4. **BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, the State reserves the right to reject any and all applications, in whole or in part, by deeming the offer unsatisfactory as to qualifications and/or experience, non-compliance with the requirements or intent of this solicitation, error(s) in specifications or indications that revision would be advantageous to the State, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of the State.
5. **EXECUTION:** Failure to sign the Execution page (page 1 of the RFB) in the indicated space will render application non-responsive and it shall be rejected.
6. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or in any resulting contract, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFB, including any negotiated terms; (2) specifications and requirements in Sections 4, and 5 of this RFB; (3) Federal Contract Terms and Conditions in Attachment E, (4) North Carolina General Contract Terms and Conditions in ATTACHMENT C; (5) Instructions to Contractors in ATTACHMENT B; and (6) Construction General Conditions in Attachment D. and (7) RFPQ.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Contractor shall furnish all information requested and in the spaces provided in this document. Contractors shall also provide descriptive literature for the means and methods to be utilized for rehabilitation, elevation and reconstruction, including but not limited to, project schedule, schedule methodology, and breakdown of subcontractors and materials.
8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the State 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 adequately protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
9. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of contract award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of The Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required

by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered as transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.

**10. SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:

- All copies of the RFP are printed double sided.
- All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
- Unless absolutely necessary, all applications and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.

**11. HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to N. C. Gen. Stat. §143-48 and Executive Order 150 (1999), the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

**12. INELIGIBLE VENDORS:** As provided in N. C. Gen. Stat. § 147-86.59 and N. C. Gen. Stat. § 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to N. C. Gen. Stat. §147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to N. C. Gen. Stat. § 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.

**13. CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets that the Contractor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as “CONFIDENTIAL” by the Contractor, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Contractor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Contractor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Contractors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.

**14. PROTEST PROCEDURES:** Contractor shall follow appeal procedures stated in RFPQ #19-RFP-014914-GSX Attachment C (Prequalification Policy).

**15. 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.

**16. COMMUNICATIONS BY CONTRACTORS:** Not applicable.

- 17. WITHDRAWAL OF APPLICATION:** an application may be withdrawn only in writing and actually received by the office issuing the RFP prior to the time for the opening of applications identified on the cover page of this RFB (or such later date included in an Addendum to the RFB). A withdrawal request shall be submitted on Contractor's letterhead and signed by an official of the Contractor authorized to make such request. Any withdrawal request made after the opening of bids shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.
- 18. INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the application process. The State is bound only by information provided in this RFB and in formal Addenda issued.
- 19. COST FOR APPLICATION PREPARATION:** Any costs incurred by Contractor in preparing or submitting applications are the Contractor's sole responsibility; the State of North Carolina will not reimburse any Contractor for any costs incurred prior to award.
- 20. CONTRACTOR'S REPRESENTATIVE:** Each Contractor shall submit with its application the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's application.
- 21. INSPECTION AT CONTRACTOR'S SITE:** The State 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 period a Contractor has been prequalified to perform work.

**ATTACHMENT C: NORTH CAROLINA GENERAL TERMS & CONDITIONS**

**1. PERFORMANCE AND DEFAULT:** If, through any cause, Contractor shall fail to fulfill in timely and proper manner the obligations under an HRP contract, the State shall have the right to terminate the contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverable items under HRP contract prepared by the Contractor shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding the foregoing, Contractor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of HRP Contract, and the State may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from a Contractor without expense to the State.

In the event of default by the Contractor, the State may procure the goods and services necessary to complete performance of an HRP contract from other prequalified contractors and hold the Contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Contractor under HRP Contract, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately cease doing business with the Contractor, immediately terminate The Contract for cause, and may take action to debar the Contractor from doing future business with the State.

A default termination of any HRP contract will automatically cause Contractor's prequalification to be revoked. If Contractor is satisfactorily performing other HRP contracts, the Contractor may still be cross defaulted on the other HRP Projects.

**2. 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, NCORR and its construction manager assigned to the HRP project at once, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

**3. AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this Contract.

**4. TAXES:** Any applicable taxes shall be invoiced as a separate item.

- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Contractors if the Contractor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Contractor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the RFP document the Contractor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

- b) 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.
  - c) 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.
- 5. SITUS AND GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.
- 6. PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods or services, whichever is later. The using agency is responsible for all payments to the Contractor under the Prequalification. Payment by some agencies may be made by procurement card, if the Contractor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Contractor for payment under the same terms and conditions as any other method of payment accepted by the Contractor. If payment is made by procurement card, then payment may be processed immediately by the Contractor.
- 7. AFFIRMATIVE ACTION:** The Contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
- 8. TERMINATION FOR CONVENIENCE:** If this contract contemplates deliverables, services and/or performance over a period of time, the State may terminate this contract at any time by providing 60 days' notice in writing from the State to the Contractor. In that event, any or all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for those items for which such option is exercised, less any payment or compensation previously made.
- 9. ADVERTISING:** Contractor agrees not to use this HRP contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or services. A Contractor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.
- 10. ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9).
- 11. ASSIGNMENT:** No assignment of the Contractor's Prequalification nor the Contractor's right to receive payment hereunder or under an HRP contract shall be permitted.
- However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Contractor, the State may:
- a) Forward the Contractor's payment check directly to any person or entity designated by the Contractor, and
  - b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check.
- In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity

of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Contractor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of this Contract.

**12. INSURANCE COVERAGE:** 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** - Contractor's shall provide and maintain Worker's Compensation, as required by the laws of North Carolina, as well as employer's liability coverage with Insurance minimum limits of \$500,000.00, covering all of Contractor's employees who are engaged in any work under this contract.
- b) **Commercial General Liability** – Contractor's shall maintain General Liability Coverage on a Comprehensive Broad Form on a cost occurrence basis in the minimum amount of \$5,000,000.00, Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- c) **Automobile** – Contractor's shall maintain automobile liability insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with this contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$10,000.00 medical payment.
- d) **Property Insurance (Builder's Risk/Installation Floater)** - Contractor shall purchase and maintain property insurance until final acceptance, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of Owner, Contractor, the subcontractors and sub-subcontractors in the work and shall insure against the perils of fire, wind, rain, flood, extended coverage, and vandalism and malicious mischief. If Owner is damaged by failure of Contractor to purchase or maintain such insurance, then Contractor shall bear all reasonable costs properly attributable thereto; Contractor shall affect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.
- e) **Deductible**-Any deductible, if applicable to loss covered by insurance provided, is to be borne by Contractor.

NCORR and its CM reserve the right to request additional insurance coverage and/or increases in limits during the Prequalification period and/or for specific HRP contracts.

**REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence with 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.

After NCORR's assignment of the Contract to Contractor and prior to performance of the contract, Contractor shall provide proof of the foregoing insurance coverages by providing CM with a certificate of insurance. Contractor shall provide a copy of the certificate of insurance upon request of Owner or Owner's attorney. If any personal injury or property damage or claim of such injury or damage should occur during construction of the Project, Contractor shall provide upon request of NCORR, CM, subcontractor, any employee of an entity inspecting the property or providing architectural, engineering and/or land surveying services (including but not limited to State employees, employees of any authority

having jurisdiction), Owner, and/or any attorney representing Owner a complete copy of any insurance policy that may provide coverage for the injury, damages and/or claim.

**NOTE:** The State Tort Claims Act, N.C. Gen. Stat. §§ 143-291 et seq., may apply to any incident involving any State employees who may be at the Project site during construction for purposes of performing CDBG-DR grant monitoring/compliance work and/or inspection of construction if he/she allegedly caused property damage or personal injury. However, the State of North Carolina and the U.S. Department of Housing and Urban Development are not liable for any personal injury, property damage, any other tort claim, or breach of this Contract by virtue of funding any portion of the construction via the award to Owner

- 13. GENERAL INDEMNITY:** The Contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the Contractor provided that the Contractor is notified in writing within 30 days that the State has knowledge of such claims. The Contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.
- 14. ELECTRONIC PROCUREMENT: DELETED.**
- 15. COMPLIANCE WITH LAWS:** Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 16. ENTIRE AGREEMENT:** This RFB and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFB, any Addenda hereto, and the Contractor's application 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.
- 17. AMENDMENTS:** This contract may be amended only by written amendments duly executed by the State and the Contractor.
- 18. NO WAIVER:** Notwithstanding any other language or provision in RFB, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
- 19. FORCE MAJEURE:** 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 as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

- 20. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in this RFB, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the State under applicable law.
- 21. ACCOUNTABILITY:** Employees of other public and private organizations providing a service to the agency are accountable to the North Carolina Department of Public Safety (DPS) Departmental Purchasing Contract Administrator and the facility head or designee of the program in which they work. The facility head or designee shall report all non-compliance issues in writing to the DPS Departmental Purchasing Contract Administrator. The DPS Departmental Purchasing Contract Administrator shall work with the employee of the public or private organization providing the service in order to bring performance up to expectations or terminate services if the conditions justify.



**ATTACHMENT D: CONSTRUCTION GENERAL CONDITIONS****ARTICLE 1 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE**

- a. Contractor shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by Contractor, designer, CM and/or NCORR. A copy of the plans and specifications shall be provided to Owner.
- b. Contractor shall maintain at the job office a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by Contractor and submitted to the designer and CM upon project completion and no later than thirty (30) days after acceptance of the project.
- c. Contractor shall maintain at the job office a record of all required tests or special inspections that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection. Contractor shall make these tests and special inspection reports available to CM, NCORR, the Authority Having Jurisdiction (“AHJ”) and Owner upon request.

**ARTICLE 2 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

- a. State Construction Documents. All drawings and specifications are instruments of service and remain the property of NCORR and/or its designer, but Contractor has a license to use drawings and specifications for future renovation or work at Home. Contractor’s use of these instruments on work other than this contract without permission of NCORR is prohibited.
- b. Contractor Construction Documents. All drawings and specifications provided by Contractor in the construction of a Project remain intellectual or proprietary property of Contractor and/or its designer. Contractor and/or its designer grant a limited license to NCORR to use drawings and specifications for future renovation or work at Home. NCORR’s use of these plans and specifications on work other than this Contract without permission of Designer is prohibited and NCORR is prohibited from selling Designer’s plans and specifications.

**ARTICLE 3 - MATERIALS, EQUIPMENT, EMPLOYEES**

- a. Contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of the same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, Contractor shall furnish evidence as to quality of materials.

- d. Products are generally specified by American Society of Testing and Materials (ASTM) or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, Contractor has the option of using any product and manufacturer combination listed. However, Contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items, or equipment shall be submitted to the CM for approval or disapproval; such approval or disapproval shall be made by the CM prior to the opening of bids. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to Owner and the CM and Owner approves.
- e. CM and/or NCORR shall be the judge of equality for proposed substitution of products, materials or equipment and whether they comply with CDBG-DR, HRP and/or grant eligibility rules, requirements and/or standards.

#### **ARTICLE 4 - ROYALTIES, LICENSES AND PATENTS**

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. Contractor shall protect and save harmless Owner, CM, NCORR, the State of North Carolina and/or HUD against suit on account of alleged or actual infringement. Contractor shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

#### **ARTICLE 5 - PERMITS, INSPECTIONS, FEES, REGULATIONS**

- a. Contractor shall give all notices and comply with all laws, ordinances, codes, rules and/or regulations bearing on the conduct of the work under this contract. If Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the CM in writing. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the CM, he shall bear all cost arising therefrom. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of Contractor and be included within the bid proposal. All water taps, meter barrels, vaults and impact fees shall be paid by Contractor and included within the bid proposal unless otherwise noted.

#### **ARTICLE 6 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC**

- a. Contractor shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by NCORR, CM, or designer, and by laws or ordinances governing such conditions. Contractor shall be responsible for any damage to Owner's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall remedy such damages. Contractor shall be responsible for and pay for any damages caused to Owner. Contractor shall have access to the project at all times.

- b. Contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building, whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to NCORR or Owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from NCORR and/or CM.
- d. Contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around the same. Contractor shall barricade all walks, roads, etc., as directed by the CM to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. Contractor shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. Contractor shall clearly mark or post signs warning of existing hazards, and shall barricade excavations, elevator shafts, stairwells and similar hazards. Contractor shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.
- f. Contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.
- g. Contractor shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to Contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to CM and NCORR at the time of the preconstruction meeting and in all cases prior to any work starting on the project.
- h. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, Contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by Contractor on account of such action shall be determined as provided for under Article 10(b).
- i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by Contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

#### **ARTICLE 7 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973**

- a. Any land-disturbing activity performed by Contractor in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).

- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, Contractor shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. Contractor shall be responsible for defending any legal actions instituted pursuant to N.C. Gen. Stat. §113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless NCORR, CM, designer, and the agents, consultants and employees of NCORR and CM, and designer from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

## **ARTICLE 8 - INSPECTION OF THE WORK**

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours and during any time work is in preparation and progress by Contractor, designer, designated official representatives of CM, AHJ, NCORR and those persons required by state law to test special work for official approval. Contractor shall therefore provide safe access to the work at all times for such inspections. Owner must give advance notice to Contractor and/or CM to ensure Owner safety pursuant to OSHA requirements.
- b. Where special inspection or testing is required by virtue of any state laws, instructions of the designer and/or CM, specifications or codes, Contractor shall give adequate notice to the designer and CM of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the designer. Such special tests or inspections will be made in the presence of the CM, or his authorized representative, or designer (if necessary) and it shall be Contractor's responsibility to serve ample notice of such tests.
- c. All laboratory tests shall be paid for by Contractor unless provided otherwise in the contract documents, including laboratory tests to establish design mix for concrete, and for additional tests to prove compliance with contract documents where materials have tested deficient, except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- d. Should any work be covered up or concealed prior to inspection and approval by AHJ and CM (when required by the contract) and/or special inspector, such work shall be uncovered or exposed for inspection, if so requested by AHJ (verbally or in writing) or CM (in writing). Inspection of the work will be made upon notice from Contractor. All cost involved in uncovering, repairing, replacing, recovering and/or restoring to design condition the work that has been covered or concealed will be paid by Contractor involved.

## **ARTICLE 9 - CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS**

- a. Contractor agrees that the terms of its contract shall apply equally to each subcontractor as to Contractor, and Contractor agrees to take such action as may be necessary to bind each subcontractor to these terms. Contractor further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to contractor-subcontractor relationships, and that payments to subcontractors shall be made in accordance with the provisions of G.S. 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.

- b. Within seven days of receipt by Contractor of each periodic or final payment, Contractor shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of periodic or final payment by Contractor, Contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due. CM and NCORR shall not be liable for interest resulting from Contractor's failure to pay any subcontractor.
- c. NCORR will retain no more than five (5) percent of progress payments from Contractor, which will be released upon final acceptance of the HRP project. Should Contractor fail to perform work under the contract, substantially delay completion of the work, or fail to correct non-conforming work in a timely manner, NCORR, through CM, may use retainage to correct non-conforming work and/or complete performance of the contract. The percentage of retainage on payments made by Contractor to the subcontractor shall not exceed the percentage of retainage on payments made by NCORR to Contractor. Any percentage of retainage on payments made by Contractor to the subcontractor that exceeds the percentage of retainage on payments made by NCORR to Contractor shall be subject to interest to be paid by Contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.
- d. Nothing in this section shall prevent Contractor, at the time of application and certification to CM and NCORR, from withholding application and certification to NCORR for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment and materials; damage to contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by NCORR.

## **ARTICLE 10 - CHANGES IN THE WORK**

- a. NCORR, through CM, may make changes to the work covered by the contract. These changes will not invalidate any portion of the contract and will not relieve or release Contractor from any guarantee given by it pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.
- b. Except in an emergency endangering life or property, no change shall be made by Contractor except upon receipt of an approved change order or written field order from CM authorizing such change. No claim for adjustments of the contract price shall be valid unless this procedure is followed.

A field order, transmitted by fax, electronically, or hand delivered, may be used where the change involved impacts the critical path of the work. A formal change order shall be issued as expeditiously as possible.

In the event of an emergency endangering life or property, Contractor may be directed to proceed on a time and materials basis, whereupon Contractor shall proceed and keep accurately on such form as specified by CM and/or NCORR, a correct account of costs, together with all proper invoices, payrolls and supporting data. Upon completion of the work, the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

- c. In determining the values of changes, either additive or deductive, Contract shall be based on the final Bid Pricing Book except for in unusual circumstances.

- d. Should below grade concealed conditions be encountered in the performance of the work, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. All change orders shall be supported by a unit cost breakdown showing method of arriving at net cost as defined above.
- e. In all change orders, Contractor will provide such proposal and supporting data in suitable written format. CM shall verify correctness. Delay in the processing of the change order due to lack of proper submittal by Contractor of all required supporting data shall not constitute grounds for a time extension or basis of a claim. Within fourteen (14) days after receipt of Contractor's accepted proposal, including all supporting documentation required by CM, CM shall prepare the change order and forward to Contractor for his signature or otherwise respond, in writing, to Contractor's proposal. Within seven (7) days after receipt of the change order executed by Contractor, CM's representative shall certify the change order by his or her signature, and forward the change order and all supporting data to NCORR for its review of CDBG-DR, HRP and/or grant eligibility compliance and, if compliant, NCORR will sign the change order and the revised scope of work may proceed. If the change order is denied, then Contractor shall not proceed with the work. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or via field orders approved by all parties, and then shall be substantiated in writing as outlined under normal procedure.
- f. A change order, when issued, shall include full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.
- g. Contractor understands and acknowledges that any and all change orders made subsequent to this Grant Agreement shall be incorporated herein by reference into this original Grant Agreement. Subsequent Change Orders shall then represent the entire Grant Agreement between the parties for the new construction of their damaged home under the Program.

#### **ARTICLE 11 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME**

- a. Contractor shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from CM and shall fully complete all work hereunder within the time of completion stated in the Contract. Time is of the essence and Contractor acknowledges NCORR will likely suffer financial damage for failure to complete the work within the time of completion. For each day in excess of the above number of days, the sum of \$250.00 per day shall be deducted from Contractor's next draw request as liquidated damages reasonably estimated in advance to cover the losses incurred by NCORR by reason of failure of said Contractor to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof. If Contractor disputes the calculation of liquidated damages, then NCORR may recover actual damages.
- b. If Contractor is delayed at any time in the progress of his work solely by: any act or negligence of Owner, CM or NCORR; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond Contractor's control; or by any other causes which CM and NCORR determine may justify the delay, then the contract time may be extended by change order only for the time which CM and NCORR may determine is reasonable.

Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where work is performed. For purposes of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by Contractor reflecting the effect of the weather on progress of the work and initialed by the CM's representative. No weather delays shall be considered after the building is dried-in unless work claimed to be delayed is on the critical path of the baseline schedule or approved updated schedule. Time extensions for weather delays, acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of NCORR do not entitle Contractor to compensable damages for delays. Any Contractor claim for compensable damages for delays is limited to delays caused solely by Owner or its agents. Contractor caused delays shall be accounted for before Owner or CM caused delays in the case of concurrent delays.

- c. Requests for extensions of time shall be made in writing to CM, with copies provided to NCORR and CM, within fifteen (15) days following cause of delay. The request must contain a brief description of: the event or situation that caused the delay; how the event and situation impacted critical work needed to complete the Project on time as such work is reflected in the schedule or reasonably inferred from the progress of construction; a statement of Contractor's inability to perform other work to mitigate the impact of the event or situation causing delay; a statement that Contractor (including employees, subcontractors, or suppliers) were not the cause of the event or situation; and such other additional work and costs incurred by Contractor resulting from the event or situation delaying Contractor's work. **Contractor understands that the failure to provide a timely request with the requested details and cost information shall result in rejection of the request absent a reasonable and substantiated explanation for the lack of timeliness which was caused by events, situations or persons outside Contractor's control. Contractor further understands that the payments made under this Contract are from a federal grant administered by a State agency and, as a result, Contractor understands that any requests for time extensions are subject to the State and federal False Claims Acts and auditing requirements.**
- d. If a performance or payment bond has been provided by Contractor for this Project, then Contractor shall notify its surety in writing of any extension of time that is granted by NCORR.

## ARTICLE 12 – APPLICATIONS FOR PAYMENT

- a. Contractor shall submit to CM a request for payment for work done on a schedule agreed upon by Contractor and CM. The request shall be in the form agreed upon between Contractor and CM, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:
  1. Total value of contract including change orders.
  2. Value of work completed to date.
  3. Less five percent (5%) retainage.
  4. Less previous payments.
  5. Current amount due.

- b. Contractor, upon request of CM, shall substantiate the request with invoices of vouchers or payrolls or other evidence including compliance with federal prevailing wage laws.
- c. Prior to submitting the first request, Contractor shall prepare for CM a schedule of values (SOV) showing a breakdown of the contract price into values of the various parts of the work, so arranged as to facilitate payments to Contractor and subcontractors. Contractor shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier.
- d. NCORR will direct CM to withhold retainage up to the statutory amount of five percent (5%) to ensure a prequalified contractor's completion of the project and/or to resolve any disputes with NCORR or subcontractors.

### **ARTICLE 13 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT**

- a. Within five (5) days from receipt of request for payment from Contractor (or other date set by Contractor, CM and NCORR), Contractor shall issue and forward to CM a certificate for payment. This certificate shall indicate the amount requested by Contractor. If the certificate is not approved by CM, CM shall state in writing to Contractor and NCORR his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof until issuance of a certificate of occupancy issued by AHJ, and CM and NCORR closeout the contract (warranties and guarantees shall remain in effect after contract closeout). The making and acceptance of final payment shall constitute a waiver of all claims by Contractor against Owner, CM and/or NCORR except:
  - 1. Claims arising from unsettled liens or claims against Contractor.
  - 2. Faulty work or materials appearing after final payment.
  - 3. Failure of Contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
  - 4. As conditioned in any payment bond.
- e. Contractor shall forward to CM and NCORR the final application for payment along with the following documents:
  - 1. List of minority business subcontractors and material suppliers showing breakdown of contract amounts and total actual payments to subs and material suppliers.
  - 2. Affidavit of Release of Liens.
  - 3. Affidavit of Contractor of payment to material suppliers and subcontractors.
  - 4. Consent of Surety to Final Payment.
  - 5. Certificates of state agencies required by state law.
  - 6. If applicable, Asbestos Manifest from a permitted disposal facility.
  - 7. Warranty certification by homeowner.
  - 8. Homeowner Acceptance of Work.



**ARTICLE 14 - PAYMENTS WITHHELD**

- a. CM, with the approval of NCORR, may withhold payment for the following reasons:
  1. Faulty work not corrected.
  2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer and/or CM.
  3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
  4. Payment documentation has not been submitted by the contractor or is unacceptable.
  5. Non-compliance with contractual requirements.
- b. When grounds for withholding payments have been removed, payment will be released.

**ARTICLE 15 -RESERVED****ARTICLE 16 - PAYMENT & PERFORMANCE BONDS**

- a. NCORR, through CM, will require Contractor to furnish a payment bond executed by a surety company authorized to do business in North Carolina. The bond shall be in the full contract amount. The bond shall be executed in the form as required by NCORR. Payments bonds will be required for major new construction projects.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.
- c. **Performance Bond**–NCORR, through CM, will require Contractor to furnish a performance bond executed by a surety company authorized to do business in North Carolina. The performance bond shall be in the full contract amount. Contractor shall submit a sample performance bond and sample power of attorney to NCORR and CM for review and approval.

**ARTICLE 17 - CONTRACTOR'S AFFIDAVIT**

The final payment of retained amount due Contractor on account of the contract shall not become due until Contractor has furnished to CM and NCORR an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against Contractor in connection with this contract. In the event that Contractor cannot obtain similar affidavits from subcontractors to protect Contractor and Owner from possible liens or claims against the subcontractor, Contractor shall state in his affidavit that no claims or liens exist against any subcontractor to the best of Contractor's knowledge, and if any appear afterward, Contractor shall hold NCORR and Owner harmless.

**ARTICLE 18 - USE OF PREMISES**

- a. Contractor shall confine its equipment, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of AHJ, CM, and NCORR and shall not exceed those established limits in his operations.
- b. Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. Contractor shall enforce CM's and NCORR's instructions regarding signs, advertisements, fires and smoking.

- d. No firearms, any type of alcoholic beverages, or drugs (other than those prescribed by a physician) will be permitted at the job site.

**ARTICLE 19 - CUTTING, PATCHING AND DIGGING**

- a. Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other subcontractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer or CM may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefore.
- c. Contractor should coordinate the work of the subcontractors to avoid unnecessary cutting, fitting or patching so that Contractor avoids damaging the work of its subcontractors, and subcontractors avoid damaging the work of Contractor and/or other subcontractors.

**ARTICLE 20 - UTILITIES, STRUCTURES, SIGNS**

- a. If the house is unoccupied, Contractor shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer and other utility services which may be necessary and required for completion of the project, including all utilities required for testing, cleaning, balancing, and sterilization of designated plumbing, mechanical and electrical systems. Any permanent meters installed shall be listed in Contractor's name until work has a final acceptance. Contractor shall contact all affected utility companies prior to bid to determine their requirements to provide temporary and permanent service and include all costs associated with providing those services in their bid. Coordination of the work of the utility companies during construction is the sole responsibility of Contractor. If occupied, CM, Contractor and Owner must reach an agreement as to apportionment of utilities, which must be included in the contract before construction begins.
- b. Meters shall be relisted in Owner's name on the day following final acceptance, and Owner shall pay for services used after that date.

**ARTICLE 21 - CLEANING UP**

- a. Contractor shall keep the building and surrounding area reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by CM. Contractor shall provide an onsite refuse container(s) for the use of all contractors. Contractor shall remove rubbish and debris from the building on a daily basis. Contractor shall broom clean the building as required to minimize dust and dirt accumulation.
- b. Contractor shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, Contractor shall clean the work area, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by Owner, with no cleaning required by Owner.

**ARTICLE 22 - GUARANTEE**

- a. Contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12)

- months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to Owner. Contractor shall provide a ten (10) year warranty for all structural work performed under the Contract.
- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. Contractor shall replace such defective equipment or materials, without cost to Owner, within the manufacturer's warranty period.
  - c. Additionally, Owner may bring an action for latent defects caused by the negligence of Contractor which are hidden or not readily apparent to Owner, NCORR or CM at the time of final acceptance, whichever occurred first, in accordance with applicable law.
  - d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies. Contractor shall also provide all instruction manuals stipulated in the specification sections and/or that were furnished to Contractor from the manufacturer (e.g., hot water heaters, HVAC units, electrical equipment or fixtures, plumbing equipment and fixtures, appliances, etc.).

#### **ARTICLE 23 – WOMEN AND MINORITY BUSINESS PARTICIPATION**

2 C.F.R. § 200.321 requires that all necessary affirmative steps are taken to assure that minority and women's businesses are used when possible, and N.C. Gen. Stat. 143-128.2 establishes a ten percent (10%) goal for participation by minority and women owned businesses in total value of work for the HRP. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts*, including Affidavits, is found on the N.C. State Construction Office website.

#### **ARTICLE 24 – CONTRACTOR EVALUATION**

Contractor's overall work performance on each assigned or awarded HRP project/contract shall be fairly evaluated in accordance with the policy and procedures for determining continued prequalification for future work in the HRP. Contractor Evaluation Procedures are hereby incorporated and made a part of Contractor's approval of its application for prequalification. CM and NCORR will evaluate Contractor's performance.

#### **ARTICLE 25 – GIFTS**

Pursuant to N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, subcontractor, supplier, vendor, etc.) to make gifts or to give favors to any State employee. This prohibition covers those vendors and contractors who: (1) have a contract with a governmental agency; or (2) have performed under such a contract within the past year; or (3) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review G.S. Sec. 133-32.

During the construction of the Project, CM, Contractor and subcontractors are prohibited from making gifts to any employees of NCORR and/or any other State employee from any other State Agency that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project. In addition,

Contractors are prohibited from making gifts to the Owner at any time. Contractors in violation of this provision of the agreement will be removed from participation in the program and reported to the HUD Office of Inspector General for investigation.

## **ARTICLE 26 – AUDITING-ACCESS TO PERSONS AND RECORDS**

In accordance with 2 C.F.R. § 200.501 and N.C. Gen. Stat. §147-64.7, the Office of the Inspector General (OIG), State Auditor, NCORR or other applicable state agency internal auditors, or HUD shall have access to CM's and Contractor's officers, employees, agents and/or other persons in control of and/or responsible for Contractor's records that relate to this Contract for purposes of conducting audits under the referenced statute. HUD and NCORR's internal auditors shall also have the right to access and copy CM's and Contractor's records relating to the Contract and Project during the term of the Contract and within five years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to CM's and Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions and related claims for delay/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from CM, NCORR and/or Owner.

## **ARTICLE 27 – NORTH CAROLINA FALSE CLAIMS ACT**

The False Claims Act (31 U.S. Code § 3729) and the North Carolina False Claims Act ("NCFCA"), N.C. Gen. Stat. § 1-605 through 1-618, apply to this Contract. Contractor should familiarize itself with the False Claims Act and the NCFCA and should seek the assistance of an attorney if it has any questions regarding the NCFCA and its applicability to any requests, demands and/or claims for payment it submits to the State through the contracting state agency, institution, university or community college.

The purpose of the NCFCA "is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim." (Section 1-605(b).) Contractor's liability under the NCFCA may arise from, but is not limited to: requests for payment, invoices, billing, claims for extra work, requests for change orders, requests for time extensions, claims for delay damages/extended general conditions costs, claims for loss productivity, claims for loss efficiencies, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, documentation used to support any of the foregoing requests or claims, and/or any other request for payment from the State through the contracting state agency, institution, university or community college.

**ATTACHMENT E: FEDERAL CONTRACT TERMS & REQUIREMENTS**

1. Flood Disaster Protection. This Contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this Contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201 (d) of said Act; and the use of any assistance provided under this Contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

2. Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). Contractor will not discriminate against any employee or applicant for employment because of a physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

In the event of Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by NCORR, provided by or through the Program Administrator. Such notices shall state Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Subcontractor or Contractor. Contractor will take such action with respect to any subcontract or purchase order as the

Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

3. Age Discrimination Act of 1975. Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.
4. Discrimination Due to Beliefs. No person with responsibilities in the operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.
5. Certification of Nonsegregated Facilities. By the submission of this Proposal, Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. Contractor certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this Contract.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local customs or any other reason.

Contractor further agrees that (except where he has obtained identical certifications from proposed Subcontractors and material Suppliers for specific time periods), he will obtain identical certifications from proposed Subcontractors or material Suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

6. Drug Free Workplace. Contractor hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 C.F.R. Part 21.
7. Contractor Work Hours, Safety, and Protection of Lives and Health. For construction contracts over \$100,000, Contractor shall comply with all standards and regulations applicable to the working hours of laborers and mechanics required by 40 U.S.C. 3702 and 3704, as supplemented by the Department of Labor regulations (29 C.F.R. Part 5). In general, these regulations and standards require Contractor to pay a basic rate for the first 40 hours of a standard 40-hour work week, and a rate of not less than one and half times the basic pay rate for hours worked in excess of 40 hours.

Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518) Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 7, 1971, Title 29 – LABOR, shall be observed and Contractor shall take or cause to be taken, such additional safety and health measures as NCORR may determine to be reasonably necessary.

8. Danger Signals and Safety Devices. Contractor shall make all necessary precautions to guard against damages to property and injury to persons. Contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case Contractor fails or neglects to take such precautions, NCORR may have such lights and barricades installed and charge the cost of this work to Contractor. Such action by NCORR does not relieve Contractor of any liability incurred under these specifications or contract.
9. Lead Based Paint Hazards. The new construction or reconstruction of residential structures is subject to the HUD Lead-Based Paint regulations, 24 C.F.R. Part 35. Contractor and its Subcontractors shall comply with the provisions for the elimination and reduction of lead-based paint hazards under Subpart B of said regulations.
10. Compliance with Air and Water Acts. For each Home New Construction or Reconstruction Owner-Contractor Agreement over \$100,000, Contractor and all of its Subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15, as amended.

In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to NCORR, the following:

- 10.1 A stipulation by Contractor or its Subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.
  - 10.2 An agreement by Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
  - 10.3 A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
  - 10.4 An agreement by Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that Contractor will take such action as the government may direct as a means of enforcing such provisions.
11. Energy Efficiency (42 U.S.C. 6201). Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
  12. Access to Records, Maintenance of Records. NCORR, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of Contractor which are directly pertinent to this Contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

All records required by 24 C.F.R. 570.506 that are pertinent to the activities funded under this Contract shall be maintained in a central location by Contractor and will be maintained for a period of five (5) years from closeout of the grant from which this Contract is funded.

13. Copyright. No State provided materials, including but not limited to reports, maps, documents, home plans and specifications, any public record, or documents submitted with or in response to RFPQ, HRP contractor-owner contract form, and related HRP and/or CDBG-DR documents pertaining to procurement, contract administration, contract management/monitoring, CDBG-DR planning and compliance, and/or contract auditing, in whole or in part, shall be available to Contractor for purposes of copyrighting as Contractor's intellectual and/or proprietary property. Subject to North Carolina Public Records laws, any such materials produced resulting from this Agreement that might be subject to copyright shall be the property of State of North Carolina, through NCORR, other State agency, and/or a federal agency of the United States (e.g., HUD and FEMA), and all such rights shall belong to the State of North Carolina and/or the United States.

A prequalified contractor, CM and/or its designer that prepares home plans and specifications for any HRP project shall retain all rights of ownership in any proprietary and/or intellectual property but shall grant limited licenses to NCORR, HUD, FEMA, and Owners to use these plans and specifications limited to the construction of an HRP project and for any governmental administrative use and/or reporting requirements. The prequalified contractor and/or its design firm may enter into license agreements or otherwise sell their home plans and specifications to other prequalified contractors for use on other NCORR and/or county CDBG-DR HRP projects, HMGP projects and/or State DRA projects subject to any State, federal and/or local laws, rules and/or ordinances.

14. Patents. Contractor shall hold and save NCORR and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract including its use by NCORR, unless otherwise specifically stipulated in the Contract.

License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by NCORR must be reasonable and paid to the holder of the patent, or his authorized license, direct by NCORR and not by or through Contractor.

If Contractor uses any design, device or materials covered by letters, patent or copyright, it shall provide for such use by suitable agreement with Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. Contractor and/or his Sureties shall indemnify and save harmless NCORR from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify NCORR for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

15. Confidential Findings. Some of the reports, information, data, etc. (e.g., homeowner personally identifying information, including but not limited to: income and/or tax records, social security numbers, birthdates, driver's license numbers, etc.), prepared or assembled by NCORR, HUD, FEMA, counties, other governmental agencies, and/or Contractor under award HRP contracts may be confidential, and Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the appropriate governmental entity that authored the



information, requested the information and/or is responsible for the program for which the Contractor is performing the work that generated the confidential information. Contractor understands that most documents and billing records will be public records and Contractor will have to consult with the governmental entity to determine whether a proposed document may be submitted to the governmental entity with confidential information and the method used to maintain confidentiality if the document contains confidential information.

16. Conflict of Interest. No member, officer, or employee of NCORR or the local jurisdictions served through this Contract, or agent, consultant, or member of the DPS, or other public official who exercises or has exercised any functions or responsibilities with respect to this Contract during his or her tenure, or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Contract or in any activity or benefit with regard to the Contract.

Contractor shall cause to be incorporated in all contracts and/or subcontracts the foregoing provision regarding conflicts of interest.

No member of or delegate to Congress, or NCORR employee, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation.

If a person receiving assistance under this Program does in fact have an interest as discussed herein, such interest shall be fully disclosed in writing to NCORR and addressed under applicable law.

17. Interest of Contractor. Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.
18. Political Activity. Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.
19. Lobbying (31 U.S.C. 1352). Contractor certifies, to the best of its knowledge and belief that:
- 19.1 No federally appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for purposes of 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 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.
- 19.2 If any funds other than federally 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 cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

20. Personnel. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with NCORR or other governmental entity involved in other State or federal disaster recovery programs.

All the services required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

21. Hiring of Illegal Aliens. The hiring of illegal aliens is prohibited under Federal Labor Laws. As a condition of Contractor's prequalification under RFPQ, Contractor certifies that it, and each of its sub-contractors for any subcontract awarded, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.
22. Anti-Kickback Rules. Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 2760). Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Contract to insure compliance by the Subcontractors with such regulations, and shall be responsible for the submission of affidavits required of Subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.
23. Debarment, Suspension and Ineligibility (2 C.F.R. 200, Appendix II(I)). Contractor represents and warrants that it and its Subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 C.F.R. 180 and 24 C.F.R. 24.1 (government debarment and suspension regulations).
24. Subcontracts. Contractor shall not enter into any subcontract with any Subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of North Carolina.

Contractor shall be as fully responsible to NCORR for the acts and omissions of Contractor's Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by Contractor.

Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractor to Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractors and to give Contractor the same power in regards to terminating any subcontract that NCORR may exercise over Contractor under any provision of the Contract Documents.

Nothing contained in this contract shall create any contractual relationship between any Subcontractor and NCORR.

25. Assignability. Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of NCORR, provided that claims for money due or to become due Contractor from NCORR under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to NCORR.
26. Termination for Unavailable Funding. The continuation of this Contract is contingent upon the appropriation and release of sufficient funds to NCORR to fulfill the requirements of this Contract. Failure of the appropriate authorities to approve and provide an adequate budget to NCORR for fulfillment of the Contract terms shall constitute reason for termination of the Contract by either Party. Contractor shall be paid for all authorized services properly performed prior to termination.
27. Breach of Contract Terms. Any violation or breach of any of the terms of this Contract on the part of Contractor or Contractor's Subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this Contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and/or remedies otherwise imposed or available by law.
28. Davis-Bacon Act (Payment of Prevailing Wages). The Davis-Bacon Act, as amended (40 U.S.C. 3141-3148), shall apply to all CDBG-DR Housing Recovery Program construction projects involving eight (8) or more units when the contract awarded by NCORR is in excess of \$2,000. Contractor and subcontractors on such projects shall comply with the Davis-Bacon Act, 40 U.S.C. 3141-3144, and 3146-3148, as supplemented by Department of Labor regulations found in 29 C.F.R. Part 5 ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must pay wages not less than once a week. NCORR must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. NCORR (including any CM assigned to manage the construction contract between Contractor and Owner) shall facilitate and monitor compliance with the Davis Bacon Act, and report all suspected and/or actual violations of the Davis-Bacon Act to HUD.
29. "Section 3" Clause. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 C.F.R. 135, and all applicable rules and orders issued hereunder prior to the execution of any contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon Contractor, and any of its subcontractors. Failure to fulfill these requirements shall subject Contractor and subcontractors, their successors and assigns, to those sanctions specified by the contract through which Federal assistance is provided. Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Contractor further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under a contract resulting from this RFP:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low-and very

low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

30. Procurement of Recovered Materials. Contractor agrees to comply with 2 C.F.R. 200.322, which requires the procurement of items designated in guidelines of the EPA at 40 C.F.R. part 247 to contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
31. Equal Employment Opportunity. Contractor agrees to the following Equal Opportunity Certification:
- 31.1 Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. 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, sexual orientation, gender identity, 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. 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.
- 31.2 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 31.3 Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
- 31.4 Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 31.5 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.
- 31.6 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.
- 31.7 In the event of 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 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 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.
- 31.8 Contractor will include the portion of the sentence immediately preceding paragraph (32.1) and the provisions of paragraphs (32.1) through (32.7) 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. 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 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.