



STATE OF NORTH CAROLINA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF RECOVERY AND RESILIENCY (NCORR)

Invitation for Bid #: 19-IFB-015374-DAD

Modular Housing Construction and Installation

Date of Issue: July 16, 2021

Bid Opening Date: August 16, 2021 at 2:00 PM ET

Direct all inquiries concerning this IFB to:

Angie Dunaway

NCORR Procurement Director

Email: angie.dunaway@ncdps.gov

Phone: 919-609-0937



STATE OF NORTH CAROLINA

Invitation for Bid # 19-IFB-015374-DAD

For internal State agency processing, including tabulation of bids in the Interactive Purchasing System (IPS), please provide your company's Federal Employer Identification (FID) Number or alternate identification number (e.g. Social Security Number). Pursuant to G.S. 132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential**, before the procurement file is made available for public inspection.

**This page is to be filled out and returned with your bid.
Failure to do so may subject your proposal to rejection.**

Vendor Name

eVP Vendor #

FID #

Note: For your bid to be considered, your company must be a North Carolina registered vendor in good standing. You should enter above the vendor number assigned through eVP (Electronic Vendor Portal). If you do not have a vendor number, register at <https://vendor.ncgov.com/vendor/login>. If you **need assistance determining your eVP number** contact the eProcurement Help Desk at **888-211-7440** Option 2 or vendor@nc.gov.

Sealed, Mailed Responses ONLY will be Accepted for this Solicitation.

STATE OF NORTH CAROLINA
Department of Public Safety
NC Office of Recovery and Resiliency (NCORR)

Refer <u>ALL</u> Inquiries regarding this IFB: angie.dunaway@ncdps.gov	Invitation for Bid # 19-IFB-015374-DAD
	Bids will be publicly opened: August 16, 2021 at 2:00 pm ET
Using Agency: NCDPS, NCORR	Commodity No. and Description: 721110 Single family dwelling construction services (UNSPSC).
Requisition No.: n/a	

EXECUTION

In compliance with this Invitation for Bid (IFB), and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein.

By executing this bid, the undersigned Vendor understands that False certification is a Class I felony and certifies that:

- that this 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. 143-59.2), and
- it is not an ineligible Vendor as set forth in G.S. 143-59.1.

Furthermore, by executing this bid, the undersigned certifies to the best of Vendor'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 Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this IFB, 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. 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 this response to the IFB, the undersigned certifies, for Vendor's entire organization and its employees or agents, that Vendor are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

As required by the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended), the undersigned vendor certifies that by applying or bidding for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C § 1352. Each tier shall also disclose any lobbying with non-Federal funds that take place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient. This procurement complies with the State's own procurement laws, rules and procedures per 2 CFR § 200.317.

Failure to execute/sign bid prior to submittal may render bid invalid and it MAY BE REJECTED. Late bids cannot be accepted.

COMPLETE/FORMAL NAME OF VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #12):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		FAX NUMBER:
VENDOR'S AUTHORIZED SIGNATURE:	DATE:	EMAIL:

VALIDITY PERIOD

Offer valid for at least 90 days from date of bid opening, unless otherwise stated here: _____ days. After this date, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this IFB.

ACCEPTANCE OF BID

If your bid is accepted and results, through negotiation or otherwise, in a contract award you will be expected to accept the NORTH CAROLINA GENERAL TERMS AND CONDITIONS as part of the Contract. This document and all provisions of this Invitation for Bid along with the Vendor bid response and the written results of any negotiations shall then constitute the written agreement between the parties.

<p>FOR STATE USE ONLY: Offer accepted and Contract awarded this _____ day of _____, 2021, as indicated on</p> <p>The attached certification, by _____.</p> <p style="text-align: center;">(Authorized Representative of Department of Public Safety)</p>
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1.0 PURPOSE AND BACKGROUND

The North Carolina Office of Recovery and Resiliency (NCORR), a division of the North Carolina Department of Public Safety (DPS), is soliciting bids from qualified Vendors that have specific experience and qualifications in the areas identified in this solicitation to provide turn-key modular housing construction and installation. The work will include, but is not limited to: commissioning the construction of the modular house, modular house transportation, modular house installation, demolition of existing structure, site design and preparation, permitting, and homeowner move-out and move-in assistance.

Construction of modular houses shall be in accordance with NCORR established house designs. There are twenty-six (26) existing NCORR architectural designed house plans. These house plans are located at <https://www.rebuild.nc.gov/plans-prelim-reports>. The site locations for the modular houses are throughout the State of North Carolina and will be designated via a Work Order at various times throughout the contract. It is estimated there will be 200 modular houses pursuant to this contract; however, no quantities are guaranteed.

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

1.1 CONTRACT TERM

The Contract shall have an initial term of one (1) year, beginning on the date of contract award (the "Effective Date"). The Vendor shall begin work under the Contract within five (5) business days of the Effective Date.

At the end of the Contract's current term, NCORR shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of two (2) additional one-year terms. The State will give the Vendor written notice of its intent to exercise this option no later than thirty (30) days before the end of the Contract's then-current term. In addition to any optional terms, and with the Vendor's concurrence, the State reserves the right to extend a contract term after the last active term.

2.0 GENERAL INFORMATION

2.1 REQUEST FOR BID DOCUMENT

The IFB is comprised of the base IFB document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this IFB in advance of any Contract award are incorporated herein by reference.

2.2 RESERVED E-PROCUREMENT SOLICITATION

ATTENTION: This is NOT an eProcurement solicitation. Paragraph entitled ELECTRONIC PROCUREMENT subsections (d) and (e) of the North Carolina General Contract Terms and Conditions, do not apply to this solicitation.

General information on the E-Procurement Services can be found at: <http://eprocurement.nc.gov/>.

2.3 NOTICE TO VENDORS REGARDING IFB TERMS AND CONDITIONS

It shall be the 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 IFB 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 IFB.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this IFB, those must be submitted as questions in accordance with the instructions in Section 2.5 BID QUESTIONS. If the State determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an IFB addendum. The State may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been addressed during the question and answer period. Other than through this process, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor’s bid. This applies to any language appearing in or attached to the document as part of the Vendor’s bid that purports to vary any terms and conditions or Vendors’ instructions herein or to render the bid non-binding or subject to further negotiation. Vendor’s bid shall constitute a firm offer. **By execution and delivery of this IFB Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, 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 bid as nonresponsive.**

By executing and submitting its bid in response to this IFB, Vendor understands and agrees that the State may exercise its discretion not to consider any and all proposed modifications Vendor(s) may request and may accept Vendor’s bid under the terms and conditions of this IFB.

2.4 IFB SCHEDULE

The table below shows the *intended* schedule for this IFB. The State will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue IFB	State	July 16, 2021
Submit Written Questions	Vendor	July 26, 2021 by 2:00 PM ET
Provide Response to Questions	State	July 29, 2021
Submit Bid	Vendor	August 16, 2021 by 2:00 PM ET
Contract Award	State	As soon as possible after evaluation
Contract Effective Date	State	Immediately upon contract execution

2.5 BID QUESTIONS

Upon review of the IFB documents, Vendors may have questions to clarify or interpret the IFB in order to submit the best bid possible. To accommodate the Bid Questions process, Vendors shall submit any such questions by the above due date.

Written questions shall be emailed to angie.dunaway@ncdps.gov by the date and time specified above. Vendors should enter “19-IFB-015374-DAD: Questions” as the subject for the email. Questions submittals should include a reference to the applicable IFB section and be submitted in a format shown below:

Reference	Vendor Question
IFB Section, Page Number	Vendor question ...?

Questions received prior to the submission deadline date/time, the State’s response, and any additional terms deemed necessary by the State will be posted in the form of an addendum to the Interactive Purchasing System (IPS), <http://www.ips.state.nc.us>, and shall become an Addendum to this IFB. 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 IFB, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this IFB.

2.6 BID SUBMITTAL

IMPORTANT NOTE: This is an absolute requirement. Vendor shall bear the risk for late submission due to unintended or unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service. It is the Vendor’s sole responsibility to ensure its bid has been received as described in this IFB by the specified time and date of opening. The time and date of receipt will be marked on each bid when received. Any bid received after the bid deadline will be rejected.

Mailing address for delivery of bid via US Postal Service or by any other method (hand delivery, special delivery, overnight, or any other carrier)

BID NUMBER: **19-IFB-015374-DAD** IFB Opens: **August 16, 2021 at 2:00 pm ET**

Attn: Angie Dunaway
North Carolina Department of Public Safety
Purchasing and Logistics
3030 Hammond Business Place
Raleigh, NC 27603

For bids submitted via U.S. mail, please note that the U.S. Postal Service generally does not deliver mail to a specified street address but to the State’s Mail Service Center. Vendors are cautioned that bids sent via U.S. Mail, including Express Mail, may not be delivered by the Mail Service Center to the agency’s purchasing office on the due date in time to meet the bid deadline. All Vendors are urged to take the possibility of delay into account when submitting a bid by U.S. Postal Service, courier, or other delivery service. **Attempts to submit a bid via facsimile (FAX) machine, telephone or email in response to this IFB shall NOT be accepted.**

a) Submit one **(1) signed hardcopy** bid response and one **(1) electronic** version on a flash drive.

The electronic (flash drive) shall contain two (2) files:

- **un-redacted** version (an exact replica of the signed hardcopy) and,
- if required, **redacted** version (all Proprietary and Confidential Information Excluded; and, Federal ID number removed).

Redacting refers to the blacking out of information so it is not visible.

Hardcopy and electronic copy shall be submitted simultaneously with the bid response to the address identified in the table above. Electronic file(s) shall NOT be password-protected but, shall be in .PDF or .XLS format, and shall be capable of being copied to other sources.

- b) Submit your bid in a sealed package. Clearly mark the package with: (1) Vendor name; (2) the IFB number; and (3) the due date. Address the package(s) for delivery as shown in the table above. Bids are subject to rejection unless submitted with the information above included on the outside of the sealed bid package.

The North Carolina Department of Public Safety, in responding to public records requests, will release the contents of the Redacted electronic (flash drive) file provided by the Vendor. It is the sole responsibility of the Vendor to ensure that the Redacted file complies with the requirements of Paragraph 29, CONFIDENTIAL INFORMATION, of ATTACHMENT B: INSTRUCTIONS TO VENDORS and ALL proprietary and confidential information has been removed. Cost information shall not be deemed confidential under any circumstances. Redacting refers to the blacking out of information so it is not visible.

Failure to submit a bid in strict accordance with these instructions shall constitute sufficient cause to reject a vendor’s bid.

Critical updated information may be included in Addenda to this IFB. It is important that all Vendors proposing on this IFB periodically check the State’s IPS website for any Addenda that may be issued prior to the IFB opening date. All Vendors shall be deemed to have read and understood all information in this IFB and all Addenda thereto.

2.7 BID CONTENTS

Vendors shall populate all attachments of this IFB that require the Vendor to provide information and include an authorized signature where requested. Listed below as a courtesy are attachments that require completion and/or signature. **All pages of the IFB should be returned.**

- a) Completed and signed EXECUTION PAGE (page 3 of this IFB)
- b) Completed and signed receipt pages of any addenda released in conjunction with this IFB (if required to be returned).
- c) Completed ATTACHMENT A: PRICING
- d) Completed ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR
- e) Completed and signed ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION
- f) Completed ATTACHMENT F: HUB SUPPLEMENTAL VENDOR INFORMATION
- g) Completed and signed ATTACHMENT I: M/WBE/HUB UTILIZATION PLAN
- h) Completed and signed ATTACHMENT J: SECTION 3 UTILIZATION
- i) Completed and signed ATTACHMENT K: NON-COLLUSION AFFAVIT

2.8 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

The following definitions, acronyms, and abbreviations may be used within the IFB document. Please refer to this list and ATTACHMENT B: INSTRUCTIONS TO VENDORS for meaning as you review the IFB document and complete your bid.

- a) **ADA:** American with Disabilities Act of 1990.
- b) **ASTM:** American Society of Testing and Material.
- c) **BATCH:** A grouping of similar Work Orders/Scopes of Work group together.
- d) **CDBG-DR:** Community Development Block Grant – Disaster Recovery Program.
- e) **CM:** NCORR Construction Manager

- f) **CONTRACT ADMINISTRATOR:** Representative of the North Carolina Office of Recovery and Resiliency (NCORR) responsible for providing daily technical oversight of the contract and making sure the vendor performs according to the technical requirements of the contract.
- g) **CONTRACT OFFICER:** Representative of the Department of Public Safety who corresponds with potential Vendors in order to identify and contract with that Vendor providing the greatest benefit to the State and who will administer the contract for the State.
- h) **DPS:** Department of Public Safety.
- i) **ECR:** Estimated Cost of Repair.
- j) **HUD:** The United States Department of Housing and Urban Development.
- k) **HRP:** NCORR Housing Recovery Program.
- l) **NCORR:** North Carolina Office of Recovery and Resiliency.
- m) **NOTICE TO PROCEED:** Notice to Vendor to commence work to be performed under this agreement.
- n) **OPENING DATE:** Responses will only be accepted up until the specified time and date listed in the IFB and then publicly opened. NO responses will be accepted after that time and date.
- o) **PRINCIPLE PLACE OF BUSINESS:** The principal place from which the overall trade or business of the Vendor is directed or managed.
- p) **REDACTED:** Edited copy of the Vendors bid response with Proprietary and/or Confidential information excluded/removed; including removal of federal identification/social security number and any Personal Identifiable Information (PII). The electronic file provided by the Vendor that will be released by DPS/NCORR in responding to public records requests. Redacted refers to the blacking out of information so it is not visible.
- q) **SHPO:** State Historic Preservation Office.
- r) **SERVICES or SERVICE DELIVERABLES (TASKS):** The tasks and duties undertaken by the Vendor to fulfill the requirements and specifications of this IFB.
- s) **UN-REDACTED:** Copy of the Vendors bid response unedited including all confidential and/or proprietary information.
- t) **WORK ORDER (WO):** Specific, written authorization to perform the task(s) listed therein.

3.0 METHOD OF AWARD AND BID EVALUATION PROCESS

3.1 METHOD OF AWARD

Contracts will be awarded in accordance with G.S. § 143-52 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.

All qualified bids will be evaluated, and award or awards will be made based on the qualified bid(s) offering the **lowest price that meet the requirements** set out herein.

While the **intent** of this IFB is to **award** a Contract(s) to a **single Vendor**, the State reserves the right to make multiple awards or to cancel this IFB in its entirety without awarding a Contract if it is considered to be most advantageous to the State to do so.

The State reserves the right to waive any minor informality or technicality in bids received.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

While this IFB is under evaluation, the Vendor, including any subcontractors and suppliers are prohibited from engaging in conversations intended to influence the outcome of the evaluation. See Paragraph 30, COMMUNICATIONS BY VENDORS, of the INSTRUCTIONS TO VENDORS.

3.3 BID EVALUATION PROCESS

Only responsive submissions will be evaluated.

The State will conduct an evaluation of responsive Bids, as follows:

Bids will be received according to the method stated in Section 2.6.

All bids must be received by the issuing agency not later than the date and time specified on the cover sheet of this IFB.

At the date and time specified as the bid opening, the bid responses from each responding Vendor will be opened and the name of the Vendor will be posted to the IPS website and the price per square foot may be posted. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position. If negotiation is anticipated under 01 NCAC 05B.0503, pricing may not be public until award.

At their sole option, the evaluators may request oral presentations or discussions with any or all Vendors for the purpose of clarification or to amplify the materials presented in any part of the bid. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all bids should be complete and reflect the most favorable terms available from the Vendor. Prices bid cannot be altered or modified as part of a clarification.

Upon completion of the evaluation process, the State will make Award(s) based on the evaluation and post the award(s) to IPS under the IFB number for this solicitation. Award of a Contract to one Vendor does not mean that the other bids lacked merit, but that, all factors considered, the selected bid was awarded.

The State reserves the right to negotiate with one or more vendors, or to reject all original offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement and submit a best and final offer (BAFO), based on discussions and negotiations with the State, if the initial responses to the IFB have been evaluated and determined to be unsatisfactory.

3.4 PERFORMANCE OUTSIDE THE UNITED STATES

Vendor shall complete ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR. In addition to any other evaluation criteria identified in this IFB, the State may also consider, for purposes of evaluating proposed or actual contract performance outside of the United States, how that performance may affect the following factors to ensure that any award will be in the best interest of the State:

- a) Total cost to the State
- b) Level of quality provided by the Vendor
- c) Process and performance capability across multiple jurisdictions
- d) Protection of the State's information and intellectual property
- e) Availability of pertinent skills

- f) Ability to understand the State's business requirements and internal operational culture
- g) Particular risk factors such as the security of the State's information technology
- h) Relations with citizens and employees
- i) Contract enforcement jurisdictional issues

4.0 REQUIREMENTS

This Section lists the requirements related to this IFB. By submitting a bid, 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 IFB. Vendor **must submit** their active **North Carolina State Manufacturer Dealer License** with their submission. Vendor **must** also **submit** their active **North Carolina General Contractor License** with their submission. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better bid, the Vendor is urged and cautioned to submit these items in the form of a question during the question and answer period in accordance with Section 2.5.

4.1 PRICING

Vendor shall provide its best price per square foot for modular; and modular with elevation, for complete performance in accordance with the requirements and specifications herein (including but not limited to Section 5.3 and 5.4), including all applicable charges such as handling, administrative and other similar fees. **The only pricing which is not included in the price per square foot are the direct costs for POD storage units and moving applicant possessions into and out of the storage unit** found at 5.3(k), where applicable. Those direct costs will be reimbursed to Vendor at cost with proper documentation submitted. **The price per square foot will include all profit and overhead for all projects.** Vendor shall complete ATTACHMENT A: PRICING FORM and include in Bid. 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.

Estimated quantities within this IFB are estimates only. Vendor will use these estimates to develop its cost basis. Number of units are for evaluation purposes only and may be adjusted up or down during the course of the Contract due to actual need. Optional extension terms to the Contract will not be evaluated. NCORR does not guarantee minimum or maximum number of units.

Construction Costs for Change Orders: The Vendor will have to agree to pricing in the [Bid Book](#), for materials while proposing pricing for appropriate items of the Bid Book which lack values and giving profit and overhead percentages. The Bid Book will be provided by NCORR to assess changes in construction costs due to the nationwide construction materials increase. Any changes to Bid Book prices will be used for future projects and will not be retroactive for projects which already have signed Notices to Proceed.

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

4.2 INVOICES

- a) Invoices must be submitted to the NCORR Construction Manager in hard copy on the Vendor's official letterhead and must be identified by a unique invoice number unless otherwise directed by the NCORR Construction Manager.

- b) Invoices must bear the correct contract number and work order number to ensure prompt payment. Vendor’s failure to include the correct work order number may cause delay in payment.
- c) Invoices must include an accurate description of the work for which the invoice is being submitted, the invoice date, the period of time covered, and the amount of fees due to Vendor. Vendor will submit a separate invoice per application number. Invoices shall include detailed information, supporting documentation and/or deliverables requested in a Work Order to allow NCORR or its designee to verify fees, costs and/or expenses.

4.3 FINANCIAL STABILITY

As a condition of contract award, the Vendor must certify that it has the financial capacity to perform and to continue perform 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 this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

Each Vendor shall certify it is financially stable by completing the ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential issues from Contracting with a Vendor that is financially unstable. From the date of the Certification to the expiration of the Contract, the Vendor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification. The Contract Officer may require annual recertification of the vendor’s financial stability.

4.4 VENDOR EXPERIENCES

In its Bid, **Vendor shall have at least three years of experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina** as described in this IFB.

Vendor **shall have at least two years of experience with modular housing practices**. Vendors are further warned that misrepresenting experience may result in state and federal False Claims Act violations.

4.5 PERSONNEL

Vendor warrants that qualified personnel shall provide goods/services under this Contract in a professional manner. “Professional manner” means that the personnel providing the goods and/or performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Vendor will serve as the prime contractor under this Contract 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 Contract documents; and shall not limit Vendor’s obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

The State may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the State may request acceptable substitute personnel or terminate the contract services provided by such personnel.

4.6 VENDOR'S REPRESENTATIONS

If the bid results in an award, the Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under the Contract. If any Services, deliverables, functions, or responsibilities not specifically described in this solicitation are required for Vendor's proper performance, provision and delivery of the service and deliverables under a resulting Contract, or are an inherent part of or necessary sub-task included within such service, 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 Services and Deliverables.

5.0 SCOPE OF WORK

5.1 GENERAL

NCORR is seeking to procure the services of a vendor to deliver turnkey modular housing and/or elevation of modular eligible structures in compliance with local, Federal, and State statutory requirements for grants.

Vendor must have the ability to **begin work on work orders** no later than **60 calendar days from award** (which shall include obtaining consent to perform the work, permitting, surveying, temporary utilities, etc.) and complete assigned construction projects within the contracted time (subject to environmental remediation). Construction shall not exceed **105 calendar days** from issuance of Work Order to issuance of Certificate of Occupancy ("COO") from AHJ for Modular housing. Construction shall not exceed **115 calendar days** from issuance of Work Order to issuance of Certificate of Occupancy ("COO") from AHJ for modular housing plus elevation.

Vendor 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. However, it is the intent and goal of NCORR and the State of North Carolina to make every HRP home project successful, so Vendor is encouraged to work proactively with NCORR, its construction manager(s) and grant eligibility Vendor(s) to identify and resolve all issues and problems immediately to minimize delays in completing construction projects.

5.2 DESCRIPTION OF SERVICES AND REQUIREMENTS

Vendor shall adhere with North Carolina, local, and/or regional Housing Guidelines. Each individual project will be nuanced depending on local construction requirements, community recovery needs, program goals, and other applicable locally approved program requirements.

Separately, NCORR has retained 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, which will comply with CDBG-DR resilient construction standards and North Carolina State Building Code. Vendor shall use provided plans for this program, which may include additional plans not yet developed.

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) **Final Home Energy Rating System (HERS) and HUD Housing Quality Standards (HQS)**

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

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

HUD has established standards of compliance that must be followed by the Vendor on every project where it is mandatory. In addition, the Vendor 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.

5.3 MODULAR SCOPE OF WORK

The scope of work for each modular 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 and disposal in accordance with all federal, state and local requirements;
- e) Removal of any above and/or in-ground oil and/or storage 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; removal & install/repairing of septic systems or removal & install/repairing of wells, where applicable;
- f) Vacancy inspection and 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) Vendor should be prepared to assess abatement needs and perform any required abatement on existing structures on the project. Vendor 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) Final survey/elevation certificate requirements;
- k) Move-out and move-in coordination with the property owner, including moving of possessions and payment and coordination of delivery and pickup of POD storage devices; and
- l) Lead, asbestos, radon, and other environmental abatement services, where applicable.

5.4 MODULAR WITH ELEVATION SCOPE OF WORK

This scope of work for each modular structure shall be in addition to the modular scope of work above.

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. Vendor and Professional Engineer/Registered Architect (PE/RA) provided by NCORR shall schedule or provide services as follows:

- a) **Site Survey.** All homes deemed to need elevation will require a land survey and elevation certificate. The final site survey shall be scheduled by the Vendor 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 Vendor will endeavor to schedule the final 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 Vendor;
- 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 vendor;
- d) **Construction Document Presentation.** Once the construction documents are completed by the PE/RA, a new permit shall be secured by the Vendor 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 (if applicable);
- i) ADA Compliance to include, although not limited to, ramps and lifts where required;
- j) Mechanical, Electrical, Plumbing (“MEP”) drawings for modifications to existing mechanical, electrical, and plumbing systems where required; and
- k) Miscellaneous repairs due to the elevation.

****Projects with elevation do not require pricing for engineering services for foundation designs. Foundation designs, site surveys, and original elevation certificates will be provided.****

5.5 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 State of North Carolina housing standards and codes are met;
- b) Comply with all applicable local, state, and federal laws, regulations, and guidelines, which shall include: HUD Community Development Block Grant disaster laws, regulations, and guidelines; and Section 3 of the Housing and Urban Development Act of 1968;
- c) Mobilize within 20 days from the execution of a Work Order;

- d) Provide documentation and tracking of construction progress;
- e) Meet all federal, state, and local requirements for the transport and disposal of municipal solid, industrial, hazardous, and other wastes from demolished structures;
- f) Provide a one-year warranty, and a third-party ten-year structural warranty. The Owner is an intended third-party beneficiary of this contract. The Owner shall hold the warranty. Contemporaneously with final inspection or final acceptance of the Project by the local building department or issuance of a certificate of occupancy, whichever is later, Vendor shall provide Owner with certificates of warranty, instruction manuals, and other documents specified in the Scope of Work and approved change orders. If not already done through progress payments, Vendor, through final payment, shall: (i) obtain release(s) of claims or liens from subvendors and/suppliers that acknowledge full payment of amounts due them including any retainage (the subject release may contain conditional language that the release shall become effective when full payment is received by subvendor or supplier) and obtain all required warranties from subvendors and suppliers; or (ii) Vendor shall comply with sub-part (i) to the extent possible and Vendor shall provide CM with an affidavit identifying the subvendors/suppliers from whom Vendor was unable to obtain releases of claims/liens notwithstanding Vendors full payments to those subvendors/suppliers; the warranties from these subvendors/suppliers that Vendor was unable to obtain, and an affirmation that Vendor will obtain the warranties or provide alternative warranties/guarantees, and that Vendor will hold harmless and indemnify Owner, NCORR and/or CM from any claims from the subvendors and suppliers identified in the affidavit to the extent Vendor has been paid for the subject work through federal grant funds and/or Owner's funds.

Vendor warrants that all materials, equipment furnished, completed systems, and work performed shall be free from defects due to faulty materials or workmanship for a period of one (1) year, and any structural work shall be similarly guaranteed for a period of ten (10) years from the date of final inspection by CM or upon issuance of a certificate of occupancy by the authority having jurisdiction, whichever is later. Where items of equipment or material(s) carry a manufacturer's warranty for any period in excess of one (1) year, Vendor shall deliver the manufacturer's original warranty to Owner prior to or contemporaneously with receipt of final payment from NCORR. Vendor or manufacturer shall replace such defective equipment or materials, without cost to Owner, within the applicable warranty period. Additionally, Owner may bring an action for latent defects caused by the negligence of Vendor that are hidden or not readily apparent to Owner and/or CM, in accordance with applicable law.

Owner must give notice of observed defects within thirty (30) days of discovery to Vendor pursuant to warranty. In the event that Vendor should fail to make repairs, adjustments, or other work that may be made necessary by any defects, Owner may, after giving thirty (30) days' notice to Vendor, make such repairs, adjustments or other work and charge Vendor the costs thereby incurred. Vendor shall promptly make corrections to any such defects, including the repair of any damage to other parts of the system resulting from such defects. Owner shall have no recourse against NCORR, any other State agency or HUD to recover the costs of correcting defects subject to a warranty from Vendor and/or manufacturer.

Articles 12, 13, 17 and 22 of the Construction General Conditions (Attachment I) contain further details and procedures applicable to warranties and instruction manuals

- g) 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 Vendors to minimize risk in the administration of these services.

- h) 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 five hundred dollars (\$500) a day for each day that exceeds approved timeframe from NTP to construction passing final inspection.
- i) 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
- j) Vendor shall perform residential asbestos and lead remediation services via third party if discovered during construction or if provided in this solicitation. Required Air monitoring shall be performed by a third party vendor. Vendor shall comply with all federal EPA and OSHA regulations, as well as all applicable North Carolina rules and regulations for asbestos and lead abatement projects and/or certificates to ensure jurisdictional compliance and project closeout.
- k) Vendor shall provide Project Specific Site Health and Safety Plan (HASP) to CM within 15 days of NTP and prior to any work beginning for each project.
- l) 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). Pricing shall include compliance with environmental (wetland, etc.) permit requirements.

6.0 CONTRACT ADMINISTRATION

All Contract Administration requirements are conditioned on an award resulting from this solicitation. This document is not a contract; it is, instead, a request for bids. This information is provided for the Vendor's planning purposes.

Per *NC Senate Bill 1213 (Session Law 2010-194)* any contract which results from the award of this Invitation for Bid shall include contract monitoring as a regular process of evaluating post award Vendor contract performance based on measurable deliverables and verifying Vendor compliance with the terms and conditions in the contract.

The general purpose of monitoring will be to 1) improve Vendor contract performance through early identification of questions and issue resolution; 2) identify potential contract problems, financial or technical, that may require additional scrutiny; 3) evaluate Vendor contract performance controls to ensure there is a reliable basis for validating deliverables and minimizing risk of contract default; 4) assure that Vendor financial documentation is adequate and accurate as it relates to contract payments.

Specifically, contract monitoring may include but are not limited to the following areas;

- Verify contractor performance for purposes of payment;
- Identify material breach of contract by assessing the difference between contract performance and material non-performance;
- Determine if corrective action is necessary and take such action, if required.

6.1 PROJECT MANAGER AND CUSTOMER SERVICE

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

Name of Project Manager	Phone number	Email address
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6.2 POST AWARD MANAGEMENT REVIEW MEETINGS

The Vendor, at the request of the State, shall be required to meet weekly (virtually) with the State for Project Review meetings. The purpose of these meetings will be to review project progress reports, discuss Vendor and State performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics. In-person meeting may be required at times.

6.3 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost to the State. A continuous improvement effort consisting of various ideas to enhance business efficiencies will be discussed at the weekly Project Status Review Meetings.

6.4 WEEKLY STATUS REPORTS

Vendor shall be required to provide Project Status Reports to the designated NCORR Contract Administrator on a weekly basis. This report shall include, at a minimum, information concerning the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, and notification of any significant deviation from previously agreed upon work plans and schedules. These reports shall be well organized and easy to read. Vendor shall submit these reports electronically using Microsoft Excel and, as needed, either Microsoft PowerPoint or Microsoft Word. Vendor shall submit the reports in a timely manner and on a regular schedule as agreed by the parties.

6.5 ACCEPTANCE OF WORK

Performance of the work and delivery of goods shall be conducted and completed in accordance with recognized and customarily accepted industry practices and shall be considered complete when the goods and/or services are approved as acceptable by the NCORR Contract Administrator.

NCORR Contract Administrator shall have the obligation to notify Vendor, in writing ten (10) calendar days following

completion of such work or deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review and evaluation. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, the State may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

6.6 DISPUTE RESOLUTION

During the performance of the contract, the Parties must agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State’s Contract Officer for resolution. Any claims by the State shall be submitted in writing to the Vendor’s Project Manager for resolution. The Parties shall agree to negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This term, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.7 CONTRACT CHANGES

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by the State and Vendor.

ATTACHMENT A: PRICING

Vendor shall offer a firm fixed price, all inclusive of labor, materials, transportation and travel related expenses, general and administrative overhead, and profit for all aspects of Sections 5.0 – 5.5 Scope of Work, except for 5.5(k). See Sections 4.1 and 5.0 - 5.5.

The estimated quantities below are to be used only for the purposes of evaluation. The State does not guarantee minimum or maximum number. Please note: **no billing rate ranges will be accepted.**

Item #	Task Description	Estimated Quantity	Average Number of Square Feet per House	Price per Square Foot	Extended Price*
1	Modular Construction & Installation	100	1,300 sq ft	\$ _____per square foot	\$ _____
2	Modular with Elevation Construction & Installation	100	1,400 sq ft	\$ _____per square foot	\$ _____

TOTAL \$ _____**

* Extended Price = Price per Sq Ft x Average Number of Sq Ft x Estimated Quantity

** TOTAL = Extended Price for Modular Construction & Installation + Modular with Elevation Construction & Installation

Pricing is NOT considered confidential. In the Redacted file do not redact (e.g. black out) pricing.

ATTACHMENT B: INSTRUCTIONS TO VENDORS

READ, REVIEW AND COMPLY:

It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda, and comply with all requirements specified, regardless of whether appearing in these Instructions to Vendors or elsewhere in the solicitation document.

Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.

REQUEST FOR OFFERS

Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all bids at any time if such rejection is deemed to be in the best interest of the State.

By submitting Your Bid or Proposal, You are offering to enter into a contract with the State.

DUTY TO INQUIRE

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention.

DEFINITIONS, ACRONYMS AND ABBREVIATIONS

The following definitions, acronyms, and abbreviations may be used within the bid document. Please refer to this list for meaning as you review the bid document and complete your bid.

- a) **AGENCY SPECIFIC TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities for a single entity.
- b) **AMENDMENT:** A document issued to supplement the original solicitation document.
- c) **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency.
- d) **BUYER:** The employee of the State or Other Eligible Entity that places an order with the Vendor.
- e) **CONTRACT LEAD:** Representative of the AGENCY identified on the first page of this solicitation document who will correspond with potential Vendors concerning solicitation issues and will contract with the Vendor providing the best offer to the State, and is the individual who will administer The Contract for the State.
- f) **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.

- g) **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns commodity in transit and files any claims, and Vendor pays all freight and any related transportation charges. A solicitation may request a Vendor to separately identify freight charges in its bid, but no amount or charge not included as part of the total bid price will be paid.
- h) **IFB:** Invitation for Bids (a type of solicitation document).
- i) **IPS:** Interactive Purchasing System.
- j) **LOT:** A grouping of similar products within this solicitation document.
- k) **OFFER:** The bid or proposal submitted in response to this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
- l) **OFFEROR:** The single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.
- m) **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
- n) **QUALIFIED BID/PROPOSAL:** A responsive bid submitted by a responsible Vendor.
- o) **RESPONSIBLE:** Refers to a vendor who demonstrates in its Offer that it has the capability to perform the requirements of the solicitation.
- p) **RESPONSIVE:** Refers to an Offer that conforms to the Requirements of the solicitation in all respects to be considered by the State for award.
- q) **RFI:** Request for Information (a type of solicitation document that does not result in a contract).
- r) **RFQ:** Request for Quotes (a type of solicitation document); in the eProcurement system, RFQs are received through the Collaborative Requisitioning process.
- s) **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
- t) **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institutions.
- u) **STATE DEPARTMENTS:** Department of Administration, Department of Agriculture and Consumer Services, Department of Commerce, Department of Natural and Cultural Resources, Department of Environmental Quality, Department of Health and Human Services, Department of Information Technology, Department of Insurance, Department of Justice, Department of Labor, Department of Military and Veteran Affairs, Department of Public Instruction, Department of Public Safety, Department of Revenue, Department of State Treasurer, Office of the Secretary of the State, Department of Transportation, Wildlife Resources Commission, Office of Budget and Management, Office of the Governor, Office of the Lieutenant Governor, Office of The State Auditor, Office of the State Controller.
- v) **THE CONTRACT:** A contract resulting from or arising out of Vendor responses to this solicitation document.

w) **VENDOR:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Solicitation document. Following award of a contract, the term refers to an entity receiving such an award.

x) **WORK:** All labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

y) **YOU and YOUR:** Offeror.

INTERPRETATION OF TERMS AND PHRASES

The solicitation document serves to advise potential Vendors of the parameters of the solution being sought by the Department. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether bids should be evaluated or rejected, the Department will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the Department's needs as described in the Solicitation document. Except as specifically stated in the Solicitation document, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement, if determined to be essential under the circumstances then existing, may result in the Department exercising its discretion to reject a bid in its entirety.

BID SUBMISSION

1. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its bid 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 bid.

2. **SIGNING YOUR OFFER:** Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

3. **EXECUTION:** Failure to sign the Execution Page (numbered page 3 of the solicitation document) in the indicated space may render bid non-responsive, and it may be rejected.

4. **STATE OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the State office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening.

5. **BID IN ENGLISH and DOLLARS:** Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

6. **LATE BIDS:** Late bids, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.

- Vendor shall bear the risk for late submission due to unintended or unanticipated delay— whether submitted electronically, delivered by hand, U.S. Postal Service, courier or other delivery service. It is the Vendor's sole responsibility to ensure its bid has been submitted to this Office by the specified time and date of opening. The date and time of submission will be marked on each bid when received, and any bid received after the bid submission deadline will be rejected.

7. **DETERMINATION OF RESPONSIVENESS:** Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer.

8. **CONTENTS OF OFFER:**

- a) Offers should be complete and carefully worded and should convey all of the information requested.
- b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the IFB. Emphasis should be on completeness and clarity of content.
- c) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

9. **MULTIPLE OFFERS.** If specifically stated in the solicitation document, Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements.

10. **CLARIFICATION:** The State may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation.

11. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded. Regardless of error or omission, a Vendor shall not be permitted to increase its pricing after the deadline for submitting bids.

12. **BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, the State reserves the right to reject any and all offers, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this solicitation, lack of competitiveness, 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.

13. **INFORMATION AND DESCRIPTIVE LITERATURE**: Vendor shall furnish all information requested in the spaces provided in the solicitation document. Further, if required elsewhere in this bid, each Vendor shall submit with its bid any sketches, descriptive literature and/or complete specifications covering the products and services offered. Reference to literature submitted with a previous bid or available elsewhere will not satisfy this provision. Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. Failure to comply with these requirements shall constitute sufficient cause to reject a bid without further consideration.

14. **WITHDRAWAL OF BID OR PROPOSAL**: Proposals submitted electronically may be withdrawn at any time prior to the date for opening proposals identified on the cover page of this solicitation documents (or such later date included in an Addendum). Proposals that have been delivered by hand, U.S. Postal Service, courier or other delivery service may be withdrawn only in writing and if receipt is acknowledged by the office issuing the solicitation document prior to the time for opening offers or proposals identified on the cover page of the solicitation document (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of proposals shall be allowed only for good cause shown and in the sole discretion of the Department.

15. **COST FOR BID OR PROPOSAL PREPARATION**: Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; the State of North Carolina will not reimburse any Vendor for any costs incurred prior to award.

16. **INSPECTION AT VENDOR'S SITE**: The State reserves the right to inspect, at a reasonable time, the equipment, item, plant or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the State's determination that such equipment, item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

NORTH CAROLINA REGULATIONS AND ORDERS

17. **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.

18. **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.

19. **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:

- If paper copies are requested, all copies of the bid 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 bids and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format 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.

20. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUB):** The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and nonprofit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts.

21. **RECIPROCAL PREFERENCE:** RESERVED.

22. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 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 G.S. 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 G.S. 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.

23. **BACKGROUND CHECKS:** Vendor and its personnel may be required to provide or undergo background checks at Vendor’s expense prior to beginning work with the State. The State of North Carolina, as described in Governor Cooper’s Executive Order 158, Furthering Fair Chance Policies in State Government Employment (August 18, 2020) is committed to eliminating discrimination against persons who have criminal records. The State will not disqualify a vendor from participating in a contract merely based on the criminal history of the Vendor, including its officers or directors, or any of its employees or other personnel providing Services on a project, unless that criminal history impedes the Vendor’s ability to perform the contract, or if State or federal law prohibits contracting with vendors with certain criminal convictions. The Vendor is encouraged to extend these considerations to employees, subcontractors, and suppliers.

As part of Vendor background the details below must be provided to the State:

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, of Vendor, its officers or directors, or any of its employees or other personnel to provide Services on this project, of which Vendor has knowledge or a statement that it is aware of none.
- b) Any **criminal investigation** for any offense involving moral turpitude, including, but not limited to fraud, misappropriation, falsification or deception pending against Vendor of which it has knowledge or a statement it is aware of none;
- c) Any **regulatory sanctions** levied against Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies within the past three years or a statement that there are none. As used herein, the term “regulatory sanctions” includes the revocation or

suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings;

d) Any **regulatory investigations** pending against Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies of which Vendor has knowledge or a statement that there are none.

e) Any **civil litigation**, arbitration, proceeding, or judgments pending against Vendor during the three (3) years preceding submission of its proposal herein or a statement that there are none.

Vendor's responses to these requests shall be considered to be continuing representations, and Vendor's failure to notify the State within thirty (30) days of any criminal litigation, investigation or proceeding involving Vendor or its then current officers, directors or persons providing Services under this contract during its term shall constitute a material breach of contract. The provisions of this paragraph shall also apply to any subcontractor utilized by Vendor to perform Services under this contract.

eBUSINESS

24. **VALID TAXPAYER INFORMATION:** All persons or entities desiring to do business with the State must provide correct taxpayer information on North Carolina specified forms. The Substitute W-9 and Instructions are here: https://files.nc.gov/ncosc/documents/NCAS_forms/State_of_North_Carolina_Sub_W9_01292019.pdf.

25. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register free with the State to receive electronic notification of current goods and services procurement opportunities on the Interactive Purchasing System, as well as notifications of status changes to those solicitations. Online registration and other purchasing information is available at the following website: <http://ncadmin.nc.gov/about-doa/divisions/purchase-contract>.

26. The status of a Vendor's **E-Procurement Services account(s)** shall be considered a relevant factor in determining whether to approve the award of a contract resulting from this SOLICITATION DOCUMENT. Any Vendor with an E-Procurement Services account that is in arrears by 91 days or more at the time of bid opening may, suspended, or deactivated, at the State's discretion, may be disqualified from further evaluation or consideration.

27. **TABULATIONS:** Bid tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/BidNumberSearch.aspx>. Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after the bid opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.

28. **SOURCING EVENT, ePROCUREMENT SYSTEM:** Sourcing is an electronic bidding application that allows an agency to receive vendor responses electronically for specified solicitations, saving time and money by eliminating the need to print and ship paper proposal packages. For more information and online training on the eProcurement Sourcing tool, visit <https://eprocurement.nc.gov/training/vendor-training>.

29. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in its bid that the Vendor 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 Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor 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 Vendor 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. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.

30. COMMUNICATIONS BY VENDORS: In submitting its bid, the Vendor agrees not to discuss or otherwise reveal the contents of its bid to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this solicitation document. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the solicitation, during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's bid and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this solicitation document. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the using agency or issuing agency authorized by this solicitation document are permitted.

31. 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 competitive process or after award. The State is bound only by information provided in writing in this solicitation document and in formal Addenda issued through IPS.

32. PROTEST PROCEDURES: When a Vendor wishes to protest the award of The Contract, a Vendor shall submit a written request addressed to the Purchasing Director at: Department of Public Safety, Purchasing and Logistics, 3030 Hammond Business Place, Raleigh, NC 27603. The protest request must be received in the proper office within thirty (30) consecutive calendar days from the date of the Contract award. Protest letters shall contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims. Note: Contract award notices are sent only to the Vendor actually awarded the Contract, and not to every person or firm responding to a solicitation. Bid status and Award notices are posted on the Internet at <https://www.ips.state.nc.us/ips/>. All protests will be handled pursuant to the North Carolina Administrative Code, 01 NCAC 05B .1519.

33. ORDER OF PRECEDENCE: In cases of conflict between specific provisions in this solicitation or those in any resulting contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this solicitation document, including any negotiated terms; (2) requirements and specifications and administration; (3) North Carolina General Contract Terms and Conditions in NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; (4) Instructions in INSTRUCTIONS TO VENDORS; (5) PRICING, and (6) Vendor's Bid.

34. ADDENDA: Critical updated information may be included in Addenda to the solicitation document. It is important that all Vendors bidding on the solicitation document periodically check the State's IPS website and the eProcurement System Sourcing Event for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in the solicitation document and all Addenda thereto. Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued concerning the solicitation document.

35. **ORAL EXPLANATIONS NON-BINDING:** Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." The State will not identify You in its answer to Your question.

36. **MAXIMUM COMPETITION:** The State seeks to permit maximum practicable competition. Offerors are urged to advise the State, as soon as possible, regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. If the State determines that any changes will be made resulting from the questions asked, then such decisions will be communicated in the form of an addendum.

37. **PROCESS TO AMEND TERMS AND CONDITIONS:** The State may elect to negotiate and amend specific provisions that have been addressed during the question and answer period. Other than through this process, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's bid or proposal. This applies to any language appearing in or attached to the document as part of the Vendor's bid or proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the bid non-binding or subject to further negotiation.

38. **FIRM OFFER:** Vendor's bid shall constitute a firm offer. By execution and delivery of a bid in response to a solicitation document, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposefully or inadvertently, shall have no force or effect, and will be disregarded. Any bid that contains language that indicates the bid is non-binding or subject to further negotiation before a contractual document may be signed shall be rejected.

ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS

1. PERFORMANCE:

- a) It is anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include Services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables not subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of the State. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in this Contract. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State shall notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor agrees to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by the State.
- c) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.
- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to the State related to all Services performed or other deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed at a minimum in accordance with generally accepted and applicable industry standards.
- e) The State may document and take into account in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

2. DEFAULT AND TERMINATION:

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. See, G.S. 25-2-712. In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State shall have the right to terminate the Contract by giving thirty days written notice to the Vendor and specifying the

effective date thereof. In that event, any or all finished or unfinished deliverables that are prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license to the extent necessary for the State to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor 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, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.

- c) If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract for convenience at any time by providing 60 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this Contract shall, at the option of the State, become its property, and under any applicable Vendor license to the extent necessary for the State to use such property. If the Contract is terminated by the State for convenience, the State shall pay for those items or Services for which such option is exercised, less any payment or compensation previously made.

3. INTERPRETATION, CONFLICT OF TERM:

- a) The definitions in the Instructions to Vendors in the relevant solicitation for this Contract, and in 01 NCAC 05A.0112 are specifically incorporated herein.
- b) If federal funds are involved in the transactions under this Contract, the Vendor shall comply with all applicable state and federal requirements and laws, except where State requirements are more restrictive. See the additional federal requirements included in the "Federal Funds Provisions" section below.
- c) "Purchasing Agency" herein is as defined in 01 NCAC 05A.0112, except that if this Contract has been entered into by the NC Department of Administration, Division of Purchase and Contract (P&C) as indicated in the Contract (e.g., a State Term Contract), then P&C will then be a Purchasing Agency for the purposes herein and in the Federal Funds Provisions, below.
- d) Contracts made in contravention of General Statutes, Chapter 143, Article 3 and the Rules in 05 NCAC Chapter 5, are void. G.S. 143-58.
- e) In cases of conflict between specific provisions in this Contract and any other referenced documents, the Order of Precedence shall be (high to low) (1) any special terms and conditions specific to this Contract, including any negotiated terms; (2) requirements, specifications and administrative terms; (3) these NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS, including the Federal Funds Provisions; (4) Definitions and other provisions in INSTRUCTIONS TO VENDORS in this solicitation, which is specifically incorporated in this Contract; (5) PRICING, and (6) Vendor's Bid, to the extent specifically and mutually incorporated into this Contract.
- f) In the event of conflict of terms between applicable provisions of the Federal Funds Provisions and the other

provisions of these North Carolina General Contract Terms and Conditions, the more restrictive provision will govern.

4. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

5. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.

6. **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 Vendors if the Vendor 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 Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

 - b) The agency(ies) participating in the Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor 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.

7. **SITUS AND GOVERNING LAWS:**
 - a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. G.S. 22B-3.

 - b) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.

 - c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

8. NON-DISCRIMINATION COMPLIANCE:

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

- a) The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor 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. The Vendor 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.

- b) The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c) The Vendor 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 the Vendor's legal duty to furnish information.
- d) The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) The Vendor shall 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.
- f) The Vendor shall 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 shall 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.
- g) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor 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.

- h) The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.
 - i) The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
 - j) The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
 - k) The Vendor further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Vendor debarred from, or who has not demonstrated eligibility for, Government Contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Vendor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part any relevant grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Vendor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Vendor; and refer the case to the Department of Justice for appropriate legal proceedings.
9. **PAYMENT TERMS:** Payment terms are net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Procuring Agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor.

The State does not agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney’s fees. This Contract will not be construed as an agreement by the State to pay such costs and will be paid only as ordered by a court of competent jurisdiction.

10. CONDITION AND PACKAGING: Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose, is newly manufactured, and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

11. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY: Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

- a) Vendor warrants to the best of its knowledge that:
 - i) Performance under the Contract does not infringe upon any intellectual property rights of any third party; and
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

- b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor’s judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement for convenience, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.

- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

- d) Vendor will not be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State’s material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.

12. ADVERTISING: Vendor agrees not to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the State is willing to be included on a listing of its existing customers.

13. ACCESS TO PERSONS AND RECORDS: During, and after the term hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 et seq., typically five years), the State Auditor and any Purchasing Agency’s internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the such retention of records period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the record retentions period, whichever is later.

14. ASSIGNMENT OR DELEGATION OF DUTIES:

- a) As a convenience to the Vendor, the State may include any person or entity designated by the Vendor in writing as a joint payee on the Vendor’s payment check. In no event shall such approval and action obligate the State to anyone other than the Vendor.
- b) If Vendor requests any assignment, or delegation of duties, the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon written request, the State may, in its unfettered discretion, approve an assignment or delegation to another responsible entity acceptable to the State, such as the surviving entity of a merger, acquisition or a corporate reorganization if made as part of the transfer of all or substantially all of the Vendor’s assets. 01 NCAC 05B.1507. Any purported assignment or delegation made in violation of this provision shall be void and a material breach of the Contract. G.S. 143-58.

15. INSURANCE: This section provides minimum insurance coverage rates that are applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts are needed based on the likelihood and severity of exposure to the State. The analysis is documented in writing in the official file and considers the following non-exclusive factors:

- 1. Potential for damage to State property or property of a third party,
- 2. Potential for bodily injury to State employees or third parties,
- 3. Whether Vendor will transport State property, clients, or employees,
- 4. Use of a vehicle to accomplish the work or to travel to or from State locations,
- 5. Anticipated physical contacts of the Vendor with the State,
- 6. Anticipated number and activity of Vendor personnel within the State, and
- 7. Any other unique considerations that could result in harm, bodily injury, or property damage.

The Purchasing Agency has specified elsewhere in this Contract any increase in the minimum insurance coverage

requirements below if the risk from the above factors is high.

a) REQUIREMENTS - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the 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 NC Commissioner of Insurance to do business in North Carolina. The Vendor 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 the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.

b) COVERAGE - During the term of the Contract, the Vendor 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. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:

1. **For Small Purchases** as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
2. **For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:**
 - i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
 - ii. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
 - iii. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

3. For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:

- i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$1,000,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
- ii. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$8,000,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
- iii. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$1,000,000.00 bodily injury and property damage; \$1,000,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.
- iv. **Property Insurance** (Builder's Risk/Installation Floater): Prime 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, Prime Contractor, the subcontractors, and the 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 Prime Contractor to purchase or maintain such insurance, then Prime Contractor shall bear all reasonable costs properly attributable thereto; Prime 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.
- v. **Deductible**: Any deductible, if applicable to loss covered by insurance provided, is to be borne by the Prime Contractor.

16. GENERAL INDEMNITY: The Vendor 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 the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims. The Vendor 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 Vendor deliverables or Services to the State. As part of this provision for indemnity, if federal funds are involved in this procurement, the Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify and hold and save the State

harmless from any claims or losses resulting to the State from the Vendor’s noncompliance with such federal requirements or law in this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract. The State does not participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial. See, G.S. 22B-3, -10.

17. ELECTRONIC PROCUREMENT: (G.S. 143-48.3)

GENERALLY APPLICABLE TO GOODS AND SERVICES CONTRACTS:

- a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State’s third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this Contract.
- b) The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.
- c) Vendor shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. Vendor shall be responsible for all activity and all charges by its agents or employees. Vendor agrees not to permit a third party to use its E-Procurement Services account. If there is a breach of security through the Vendor’s account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

E-PROCUREMENT FEES – APPLICABLE ONLY TO GOODS CONTRACTS

- d) **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE, CURRENTLY 1.75% (.0175), ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE (OR ANY OFFICIAL REPLACEMENT SERVICE). G.S. 66-58.12; See, NC E-Procurement Terms of Use.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor’s failure to perform or comply with specifications or requirements of the Contract.
- e) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State’s transaction fee by the E-Procurement Supplier Manager (Supplier Manager), based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless the Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed

to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee, or it shall be considered a material breach of Contract. Pursuant to G.S. 147-86.23, the service will charge 1) interest on past due balances at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due, and, 2) late payment penalties, currently ten percent (10%) of the account receivable. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

18. **SUBCONTRACTING:** Performance under the Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.
19. **CONFIDENTIALITY:** Vendor information that cannot be shown to be, e.g., a trade secret, may be subject to public disclosure under the terms of the State Public Records Act (SPRA), beginning at G.S. 132.1. Blanket assertions of confidentiality are not favored, but confidentiality of specific material meeting one or more exceptions in the SPRA will be honored. Vendors are notified that if the confidentiality of material is challenged by other parties, the Vendor has the responsibility of defending the assertion of confidentiality. G.S. 143-52(a).
20. **CARE OF STATE DATA AND PROPERTY:** Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of the State.

The State's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor agrees to reimburse the State for loss or damage of State property while in Vendor's custody. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.

The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B-1379. For further information, see, G.S. 75-60 et seq. Notice is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. See, e.g., G.S. 143B-1376.

21. **OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to Contract with a subcontractor for any such performance, which subcontractor and nature of the work has

not previously been disclosed to the State in writing, prior written approval must be obtained from the State Purchasing Agency. Vendor shall give notice to the Purchasing Agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States. See, G.S. 143-59.4.

- 22. ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. 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.
- 23. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."
- 24. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.
- 25. NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor-supplied material, 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.
- 26. 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 unforeseen 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, other catastrophic epidemic or pandemic, natural event or Act of God.
- 27. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.
- 28. [FEDERAL FUNDS PROVISIONS \(Applicable\)](#):**

Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistent with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional

provisions depending on the scope and context of the Contract. Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

- a) **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor’s bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State’s award of any work under this Contract.
- b) **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- c) **Remedies and Termination.** For purposes of this section the State Remedies and Termination provisions above apply as written.
- d) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Compliance with the Contract Work Hours and Safety Standards Act.

1. *Overtime requirements.* No Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. §5.5(b)(1).
3. *Withholding for unpaid wages and liquidated damages.* The Purchasing Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other

federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.5(b)(2).

4. *SubContracts*. The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(2) through (4).

e) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.

Clean Air Act

1. The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

Federal Water Pollution Control Act

1. The Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees that these requirements will be included in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

f) Debarment and Suspension.

1. This Contract, if federal funding is used, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor is required to verify that none of the Vendor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

g) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** (as Amended).

To the extent applicable, Vendors that apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Vendors must sign and submit to the Purchasing Agency the certification. See the latest version of "Certification for Contracts, Grants, Loans, and Cooperative Agreements" found at <https://ncadmin.nc.gov/documents/vendor-forms>.

h) **Procurement of Recovered Materials.**

1. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - Meeting Contract performance requirements; or
 - At a reasonable price.
2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

i) **Access to Records.** In addition to the North Carolina General Contract Terms & Conditions section entitled "**ACCESS TO PERSONS AND RECORDS**" included in this Contract, the following access to records requirements apply to this Contract:

1. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 2. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 3. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
 4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.
- j) **Modifications to Contract.** Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled "AMENDMENTS," except as approval and signature by any federal official may also be required.
- k) **Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.
- l) **Energy Efficiency.** All participants in the projects funded hereby shall recognize 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 (PL 94-163).
- m) **Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.
- n) **No Obligation by Federal Government.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.
- o) **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.
- p) **Federal Seals, Logos, and Flags.** In addition to the prohibitions of the North Carolina General Contract

Terms & Conditions section above entitled “**ADVERTISING**,” the Vendor shall not use the seal(s), logos, crests, or reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.

- q) **System for Awards Management.** Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <http://www.pandc.nc.gov/actions.asp> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.

ADDITIONAL DEPARTMENT OF PUBLIC SAFETY CONTRACT TERMS & CONDITIONS:

1. **ALCOHOL/DRUG FREE WORK PLACE POLICY:** A copy of the Department’s Alcohol/Drug Free Work Place Policy is attached (**ATTACHMENT G**) to this solicitation. The contractor shall use reasonable and good faith efforts to ensure that employees/staff are aware of the Department’s policy. The contractor understands that its employees/staff are required to abide by these standards. The contractor further understands that possession, use, manufacture, or distribution of illegal drugs or alcohol in violation of this policy, by employees/staff participating in the performance of this contract, may result in immediate termination of this contract for cause.
2. **PREA:** The NC Department of Public Safety is committed to a standard of zero-tolerance pertaining to unduly familiar or sexually abusive behavior either by another juvenile or by staff, volunteer, vendor, contractor or party. Staff, volunteers, vendors, contractors or parties are strictly prohibited from engaging in personal dealings or any conduct of a sexual nature with any inmate or juvenile. Conversation and conduct with any inmate or juvenile must be professional at all times. Sexual acts between a juvenile or inmate and staff, volunteer, vendor, contractor or party may violate North Carolina law. Additionally, sexual acts between a juvenile or inmate and staff member will contradict the standards of the federal Prison Rape Elimination Act of 2003 (PREA). Such acts also may be punishable, at a minimum, as a Class E felony in North Carolina. Under North Carolina, consent of the inmate or juvenile may not available as a defense for an individual who is charged criminally based on sexual conduct with the inmate or juvenile. Also, pursuant to PREA standards, no juvenile or inmate can consent to engage in sexual activity with staff, volunteers, vendors, contractors or parties. Any contractual facility will comply with the national standards to prevent, detect, and respond to PREA (115.12, 212, 312) and permit the Department to monitor this aspect of the contract to ensure compliance with the PREA standards.

As a valued partner with DPS, it is important to remember that if you become aware of a report of any incidents of unduly familiar or sexually abusive behavior or sexual harassment, you have a duty to report this information immediately to your contact person with the Agency, by email to prea@ncdps.gov, or the DPS Communications office at (800) 368-1985.

Additionally, it may violate North Carolina law to sell or give an inmate or juvenile any alcoholic beverages, barbiturate or stimulant drug, or any narcotic, poison or poisonous substance, except upon the prescription of a physician; and it may violate North Carolina law to give an inmate or juvenile any tobacco or tobacco products, alcohol, or cell phones. It may also violate NCDPS policy to convey to or take from any juvenile or inmate any letters, or verbal messages; to convey any weapon or instrument by which to effect an escape, or that will aid in an assault or insurrection; to trade with any inmate for clothing or stolen goods or to sell any inmate any article forbidden by NCDPS policy.

By signing this document, you acknowledge that you understand and will abide by this policy as outlined above.

3. **ESCALATION CLAUSE:** Prices offered herein shall be firm for a period of one (1) year from the date of initial contract performance. If the contract provides for an option year(s) and the Department exercises that option(s), the contractor may request a price increase for that year but it must not exceed the change in points during the previous twelve (12) month period in the *Consumer Price Index-All Items (All Urban Consumers) or 5%, whichever is less. If the requested increase is in compliance with these specified limitations, the new price will be effective thirty (30) days from the date the request is received by the Department.

Consumer Price Index: U. S. Department of Labor, Bureau of Labor Statistics; www.bls.gov.

ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with N.C.G.S. §143-59.4, the Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside the United States in the performance of the Contract. Vendor shall complete items a) and b) below.

a) Will any work under this Contract be performed outside the United States? YES NO

If "YES":

1) List the location(s) outside the United States where work under the Contract will be performed by the Vendor, any subcontractors, employees, or other persons performing work under the Contract:

2) Specify the manner in which the resources or workers will be utilized:

b) Where, within the U.S., will work be performed?

NOTES:

- 1) The State will evaluate the additional risks, costs, and other factors associated with the utilization of workers outside the United States prior to making an award.
- 2) Vendor shall provide notice, in writing to the State, of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under the Contract to a location outside the United States.
- 3) All Vendor or subcontractor personnel providing call or contact center services to the State of North Carolina under the Contract shall disclose to inbound callers the location from which the call or contact center services are being provided.

ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION

The undersigned hereby certifies that: [check all applicable boxes]

- The Vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: _____ (If no audit within past 18 months, explain reason below.)

- The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.
- The Vendor is current in all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.
- The Vendor is not the subject of any current litigation or findings of noncompliance under federal or state law.
- The Vendor has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.
- He or she is authorized to make the foregoing statements on behalf of the Vendor.

Note: This shall constitute a continuing certification and Vendor shall notify the Contract Lead within 15 days of any material change to any of the representations made herein.

If any one or more of the foregoing boxes is NOT checked, Vendor shall explain the reason(s) in the space below:



Signature

Date

Printed Name

Title

[This Certification must be signed by an individual authorized to speak for the Vendor]

ATTACHMENT F: HUB SUPPLEMENTAL VENDOR INFORMATION

Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, 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. This includes utilizing individual(s) of the categories as subcontractors to perform the required functions in this solicitation documents.

The Vendor shall respond to the question below, as applicable.

Is Vendor a NC-certified HUB? **Yes** **No**

If yes, provide **vendor #**: _____

If no, does vendor qualify for certification as HUB? **Yes** **No**

Vendors that check “yes” will be referred to the HUB Office for assistance in acquiring certification.

Questions concerning NC HUB certification, contact the **North Carolina Office of Historically Underutilized Businesses** at 984-236-0130 or huboffice.doa@doa.nc.gov.

NOTE:

Vendor shall comply with requirements under **2 C.F.R. §200.321**. The awarded Vendor agrees, if subcontracts are to be utilized, to assure that minority businesses, women’s business enterprises and labor surplus area firms are used when possible.

The affirmative steps must include:

- a. Placing qualified small and minority businesses, and women’s business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourages participation by small and minority businesses, and women’s business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as North Carolina Department of Administration Office of Historically Underutilized Businesses, the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

ATTACHMENT G: ALCOHOL/DRUG-FREE WORK PLACE POLICY

POLICY

It is the policy of the Department of Public Safety to provide a work environment free of alcohol and drugs in order to ensure the safety and well-being of employees, correctional clientele, and the general public. All employees of the Department of Public Safety, including permanent full-time, trainee, and permanent part-time, permanent hourly, probationary, and temporary shall abide by this policy.

PURPOSE

This document is intended to advise managers and employees of the guidelines of an alcohol/drug free work place, and to set out the penalties for violation(s) of the guidelines.

PROCEDURES/OPERATIONAL GUIDELINES

All employees of the Department of Public Safety are expected to be physically and mentally prepared and able to perform their assigned duties throughout the workday. No employee shall report to the work site impaired by or suffering from the effects of drugs or alcohol.

Individuals reporting for work under the influence or the effects of alcohol and/or drugs shall be issued discipline, up to and including dismissal, consistent with the policy governing personal conduct.

No employee shall manufacture, distribute, or dispense controlled substances (drugs/alcohol) at the work site or away from the work site. No employee shall use "across the counter" medication to the point of impairment while at the work site, or in any situation which may bring discredit to the Department. Use or abuse shall be viewed as personal misconduct and shall be cause for immediate disciplinary action up to and including dismissal.

Possession of an illegal substance in any situation, at work or away from the work site shall be cause for discipline. Possession of controlled substances, i.e. Prescription medication or alcohol, must be in compliance with existing laws. Violations will result in discipline up to and including dismissal based on personal misconduct.

Employees who are arrested, detained, or served a warrant for any alcohol/drug related incident, at the work site or away from the work site have 24 hours to file a written report of the situation with the work unit supervisor/manager, i.e. Warden, Superintendent, Branch Manager. The work unit supervisor/manager shall make a recommendation for appropriate disciplinary action based on the facts of the case after conducting a thorough investigation.

If sufficient facts cannot be obtained due to pending litigation, the work unit supervisor/manager shall request, in writing, that any recommendation for disciplinary action be delayed until the court has disposed of the matter. Once the legal proceedings have been completed, the employee shall furnish a certified copy of the court disposition within 48 hours of the judgment. The recommendation for discipline shall be made at this time, if not previously addressed.

Any conviction of a drug or alcohol related offense, which occurred at the work site, shall be reported to the federal government by the Personnel Office; therefore, such offenses shall be reported to the Personnel Office by the appropriate manager so that the Personnel Office may comply with the requirement.

The Department of Public Safety utilizes the State Employee Assistance Program (EAP) administered through the Office of State Personnel. The EAP provides employees with a comprehensive referral service to aid in coping with or overcoming personal problems, including drug and alcohol problems. Consultants with the State EAP will provide managerial/supervisory training and coordinate employee orientation.

ATTACHMENT H: CONSTRUCTION GENERAL CONDITIONS

ARTICLE 1 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

- a. Vendor 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 Vendor, designer, CM and/or NCORR. A copy of the plans and specifications shall be provided to Owner.
- b. Vendor 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 Vendor and submitted to the designer and CM upon project completion and no later than thirty (30) days after acceptance of the project.
- c. Vendor 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. Vendor 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 Vendor has a license to use drawings and specifications for future renovation or work at Home. Vendors use of these instruments on work other than this contract without permission of NCORR is prohibited.
- b. Vendor Construction Documents. All drawings and specifications provided by Vendor in the construction of a Project remain intellectual or proprietary property of Vendor and/or its designer. Vendor 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. Vendor 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, Vendor 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, Vendor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, Vendor has the option of using any product and manufacturer combination listed. However, Vendor 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.
- 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. Vendor 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. Vendor 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. Vendor 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 Vendor 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 Vendor 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 Vendor and be included within the bid proposal. All water taps, meter barrels, vaults and impact fees shall be paid by Vendor and included within the bid proposal unless otherwise noted.

ARTICLE 6 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. Vendor 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. Vendor shall be responsible for any damage to Owner's property, or of that of others on the job, by them, their personnel, or their subvendors, and shall remedy such damages. Vendor shall be responsible for and pay for any damages caused to Owner. Vendor shall have access to the project at all times.
- b. Vendor 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 subvendors. 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. Vendor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around the same. Vendor 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. Vendor 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. Vendor shall clearly mark or post signs warning of existing hazards, and shall barricade excavations, elevator shafts, stairwells and similar hazards. Vendor 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. Vendor 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. Vendor 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 Vendor 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, Vendor 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 Vendor 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 Vendor. 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 Vendor 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, Vendor shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. Vendor 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, Vendor 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 Vendor, designer, designated official representatives of CM, AHJ, NCORR and those persons required by state law to test special work for official approval. Vendor shall therefore provide safe access to the work at all times for such inspections. Owner must give advance notice to Vendor 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, Vendor 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 Vendors responsibility to serve ample notice of such tests.
- c. All laboratory tests shall be paid for by Vendor 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 Vendor. 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 Vendor involved.

ARTICLE 9 - VENDOR AND SUBVENDOR RELATIONSHIPS

- a. Vendor agrees that the terms of its contract shall apply equally to each subvendor as to Vendor, and Vendor agrees to take such action as may be necessary to bind each subvendor to these terms. Vendor further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Vendors of America, Inc., with respect to Vendor-subvendor relationships, and that payments to subvendors shall be made in accordance with the provisions of G.S. 143-134.1 titled Interest on final payments due to prime Vendors: payments to subvendors.
- b. Within seven days of receipt by Vendor of each periodic or final payment, Vendor shall pay the subvendor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subvendor be delayed by more than seven days after receipt of periodic or final payment by Vendor, Vendor shall pay the subvendor 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 Vendors failure to pay any subvendor.
- c. NCORR will retain no more than five (5) percent of progress payments from Vendor, which will be released upon final acceptance of the HRP project. Should Vendor 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 Vendor to the subvendor shall not exceed the percentage of retainage on payments made by NCORR to Vendor. Any percentage of retainage on payments made by Vendor to the subvendor that exceeds the percentage of retainage on payments made by NCORR to Vendor shall be subject to interest to be paid by Vendor to the subvendor at the rate of one percent (1%) per month or fraction thereof.

- d. Nothing in this section shall prevent Vendor, at the time of application and certification to CM and NCORR, from withholding application and certification to NCORR for payment to the subvendor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of subvendor to make timely payments for labor, equipment and materials; damage to Vendor or another subvendor; 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 Vendor 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 Vendor 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, Vendor may be directed to proceed on a time and materials basis, whereupon Vendor 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 negotiated 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, Vendor 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 Vendor 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 Vendors accepted proposal, including all supporting documentation required by CM, CM shall prepare the change order and forward to Vendor for his

signature or otherwise respond, in writing, to Vendors proposal. Within seven (7) days after receipt of the change order executed by Vendor, 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 Vendor 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. Vendor understands and acknowledges that any and all change orders made subsequent to this Contract shall be incorporated herein by reference into this original Contract. Subsequent Change Orders shall then represent the entire 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. Vendor 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 Vendor 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 five hundred dollars (\$500) per day shall be deducted from Vendors next draw request as liquidated damages reasonably estimated in advance to cover the losses incurred by NCORR by reason of failure of said Vendor to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof. If Vendor disputes the calculation of liquidated damages, then NCORR may recover actual damages.
- b. If Vendor 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 Vendors 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 Vendor 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 Vendor to compensable damages for delays. Any Vendor claim for compensable damages for delays is limited to delays caused solely by Owner or its agents. Vendor 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, but under no circumstances after the ending of the period of performance. 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 Vendors inability to perform other work to mitigate the impact of the event or situation causing delay; a statement that Vendor (including employees, subvendors, or suppliers) were not the cause of the event or situation; and such other additional work and costs incurred by Vendor resulting from the event or situation delaying Vendors work. **Vendor 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 Vendors control. Vendor further understands that the payments made under this Contract are from a federal grant administered by a State agency and, as a result, Vendor 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 Vendor for this Project, then Vendor shall notify its surety in writing of any extension of time that is granted by NCORR.

ARTICLE 12 – APPLICATIONS FOR PAYMENT

- a. Vendor shall submit to CM a request for payment for work done on a schedule agreed upon by Vendor and CM. The request shall be in the form agreed upon between Vendor 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. Vendor, 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, Vendor 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 Vendor and subvendors. Vendor shall list the value of each subvendor and supplier, identifying each minority business subvendor and supplier.
- d. NCORR will direct CM to withhold retainage up to the statutory amount of five percent (5%) to ensure a prequalified Vendors completion of the project and/or to resolve any disputes with NCORR or subvendors.

ARTICLE 13 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from Vendor (or other date set by Vendor, CM and NCORR), Vendor shall issue and forward to CM a certificate for payment. This certificate shall indicate the amount requested by Vendor. If the certificate is not approved by CM, CM shall state in writing to Vendor 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 Vendor against Owner, CM and/or NCORR except:
 - 1. Claims arising from unsettled liens or claims against Vendor.
 - 2. Faulty work or materials appearing after final payment.
 - 3. Failure of Vendor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 - 4. As conditioned in any payment bond.

- c. Vendor shall forward to CM and NCORR the final application for payment along with the following documents:
 - 1. List of minority business subvendors 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 Vendor of payment to material suppliers and subvendors.
 - 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 Vendor 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 Vendor 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 and presented within 5 business days of contract execution. 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 Vendor 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. Vendor shall submit a sample performance bond and sample power of attorney to NCORR and CM for review and approval.

ARTICLE 17 - VENDORS AFFIDAVIT

The final payment of retained amount due Vendor on account of the contract shall not become due until Vendor 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 Vendor in connection with this contract. In the event that Vendor cannot obtain similar affidavits from subvendors to protect Vendor and Owner from possible liens or claims against the subvendor, Vendor shall state in his affidavit that no claims or liens exist against any subvendor to the best of Vendors knowledge, and if any appear afterward, Vendor shall hold NCORR and Owner harmless.

ARTICLE 18 - USE OF PREMISES

- a. Vendor 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. Vendor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. Vendor 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. Vendor 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 subvendors 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. Vendor should coordinate the work of the subvendors to avoid unnecessary cutting, fitting or patching so that Vendor avoids damaging the work of its subvendors, and subvendors avoid damaging the work of Vendor and/or other subvendors.

ARTICLE 20 - UTILITIES, STRUCTURES, SIGNS

- a. If the house is unoccupied, Vendor 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 Vendors name until work has a final acceptance. Vendor 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 Vendor. If occupied, CM, Vendor 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. Vendor 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. Vendor shall provide an onsite refuse container(s) for the use of all Vendors. Vendor shall remove rubbish and debris from the building on a daily basis. Vendor shall broom clean the building as required to minimize dust and dirt accumulation.
- b. Vendor shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, Vendor 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. Vendor 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. Vendor 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. Vendor 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 Vendor 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. Vendor shall also provide all instruction manuals stipulated in the specification sections and/or that were furnished to Vendor 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 – VENDOR EVALUATION

Vendors 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. Vendor Evaluation Procedures are hereby incorporated and made a part of Vendors approval of its application for prequalification. CM and NCORR will evaluate Vendors performance.

ARTICLE 25 – GIFTS

Pursuant to N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or Vendor (i.e. architect, bidder, Vendor, construction manager, design professional, engineer, subvendor, supplier, vendor, etc.) to make gifts or to give favors to any State employee. This prohibition covers those vendors and Vendors 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 Vendors are encouraged to review G.S. Sec. 133-32.

During the construction of the Project, CM, Vendor and subvendors 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, Vendors are prohibited from making gifts to the Owner at any time. Vendors 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 Vendors officers, employees, agents and/or other persons in control of and/or responsible for Vendors 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 Vendors 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 Vendors 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 subvendors 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. Vendor 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).) Vendors 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 subvendors 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 I: M/WBE/HUB UTILIZATION PLAN

Complete the following form.

M/WBE/HUB UTILIZATION WORKSHEET			
<p>Instructions: This Utilization Worksheet must be submitted with any bid/assignment. This Worksheet 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 bid. Attach additional sheets if necessary. NC statute requires a 10% goal for M/WBE participation. The percentage should be found by adding all "Anticipated Dollar Value of Subcontracts" from this form and dividing it by the total bid amount. If the goal is not met, then documentation <u>MUST</u> be attached which explains the good faith efforts made to reach the 10% goal (not rounded). NCORR will evaluate the good faith efforts and, in its sole discretion, will determine if the efforts made are sufficient. If the goal is not met and sufficient good faith efforts (as determined solely by NCORR) are not made then the bid will be deemed non-responsive.</p>			
PROPOSED CONTRACT DOLLAR VALUE:			
VENDOR CONTACT INFORMATION			
Company Name:			
Phone:	Fax:	Email:	
Registered company address:			
City:	State:	ZIP Code:	
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	NC Certified <input type="checkbox"/> MBE/HUB <input type="checkbox"/> WBE		\$
2	NC Certified <input type="checkbox"/> MBE/HUB <input type="checkbox"/> WBE		\$
3	NC Certified <input type="checkbox"/> MBE/HUB <input type="checkbox"/> WBE		\$
Total percentage of M/WBE participation: _____%		ATTACH GOOD FAITH EFFORTS DOCUMENTATION IF LESS THAN 10%.	
PREPARED BY:		* FOR AGENCY USE ONLY*	
Name, Title, Signature:		Reviewed By:	
		Approved:	Date:
Date:		<input type="checkbox"/> Yes <input type="checkbox"/> No	

ATTACHMENT J: SECTION 3 UTILIZATION

Complete the following form.

SECTION 3 UTILIZATION WORKSHEET		
<p>Instructions: This Utilization Worksheet must be submitted with any bid. This Worksheet must contain a detailed description of the supplies and/or services to be provided by each certified Section 3 Business under the bid. Attach additional sheets if necessary. At least one subcontract MUST be listed. Full Section 3 compliance will be assessed quarterly and will factor into the Vendor's scorecard score.</p>		
PROPOSED CONTRACT DOLLAR VALUE:		
VENDOR CONTACT INFORMATION		
Company Name:		
Phone:	Fax:	Email:
Registered company address:		
City:	State:	ZIP Code:
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		\$
2		\$
3		\$
PREPARED BY:		* FOR AGENCY USE ONLY*
Name, Title, Signature:		Reviewed By:
Date:	Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No	Date:

ATTACHMENT K: NON-COLLUSION AFFIDAVIT

Non-Collusion Affidavit

By submission of this bid, bidder and each person signing on behalf of the 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 DETIAL 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 _____ day of _____, 2021 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

Bid Number: 19-IFB-015374-DAD

Vendor: _____

Identifying Data:

Potential Contractor: _____

Street Address: _____

City, Town, etc.: _____

Telephone: _____

Title: _____

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.

By: _____
(Name)

By: _____
(Name)

Title: _____

Title: _____

Street Address: _____

Street Address: _____

City/State: _____

City/State: _____